TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. 136

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., APPELLANTS,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT

FILED [illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 883.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., APPELLANTS,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

INDEX.

	Original.	Print.
Caption	a	a
Petition	1	1
Exhibit A.—Application No. 1	50	50
B.—Application No. 13	52	52
C.—Application No. 12	54	54
D.—Application No. 11	56	56
E.—Application No. 5	57	57
F.—Application No. 4	59	59
G.—Application No. 2	61	61
Supplemental report of commission, June 22, 1911—Opinion No. 1623	64	64
Supplemental report of commission, June 22, 1911—Opinion No. 1627	148	148
Affidavit of J. C. Stubbs	193	193
H. E. D. Jackson	208	208
James G. Woodworth	215	215
G. W. Luce	227	227
F. H. Plaisted	245	245
J. A. Munroe	255	255
Frederick H. Parker	258	258
Motion for restraining order	262	263

	Original.	Print.
Acceptance of notice of hearing	263	263
Notice to Attorney General	264	264
Notice to Interstate Commerce Commission	265	264
Appearance for Interstate Commerce Commission	266	265
Affidavit of E. B. Boyd	267	266
Motion to dismiss	280	273
Petition of intervention of city of Spokane et al	283	275
Affidavit of E. P. Ripley	286	276
Map	308	288
Affidavit of James Peabody	309	288
Petition of intervention of Chicago Association of Commerce	312	290
Order allowing city of Spokane et al. to intervene	316	292
Answer of city of Spokane et al	317	292
Affidavit of H. M. Stephens	327	297
Petition of intervention of Interior Counties Freight Bureau et al	331	299
Affidavit of F. M. Dewees	335	300
F. M. Dewees	343	305
Tabulated statement	345	305
Order allowing Interior Counties Freight Bureau et al. to intervene	372	313
Affidavit of Byron Waters	373	313
Report by stations and months, etc	376	316
General statistics	377	319
Order allowing Chicago Association of Commerce to intervene	386	323
Affidavit of C. J. McNitt	387	324
R. Blaisdell	389	325
Argument commenced	391	327
Affidavit of A. D. McDonald	392	327
Argument continued	395	329
Motion to dismiss	396	329
Argument continued	398	330
Petition of intervention of Giroux Consolidated Mines Co	399	331
Order allowing intervention of Giroux Consolidated Mines Co	401	332
Argument concluded	402	332
Letter of William Ellis to clerk, October 23, 1911	403	333
Answer of Chicago Association of Commerce	404	333
Order granting application for preliminary injunction and denying motions to dismiss	412	337
Opinion	413	338
Assignment of errors	439	351
Petition for appeal	446	355
Order allowing appeal	448	356
Docket entries	449	357
Clerk's certificate	451	358
Citation and service	452	359

United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; UNION Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & North Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Milwaukee & Puget Sound Railway Company; Denver & Rio Grande Railroad Company; Missouri Pacific Railway Company; Western Pacific Railway Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company, petitioners,

vs.

UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE Commission; City of Spokane et al.; Chicago Association of Commerce; Interior Counties Freight Bureau of Southern California et al.; Giroux Consolidated Mines Company, interveners.

} No. 50.

UNITED STATES OF AMERICA, *ss:*

Be it remembered, that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition,
filed October 4 1911.
No. 50.

IN THE

United States Commerce Court.

Atchison, Topeka & Santa Fe Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Chicago, Milwaukee & Puget Sound Railway Company, Denver & Rio Grande Railroad Company, Missouri Pacific Railway Company, Western Pacific Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company,

Petitioners,

vs.

United States of America,

Respondent.

PETITION.

To the Honorable the Judges of the United States Commerce Court.

The Atchison, Topeka & Santa Fe Railway Company, a corporation organized under the laws of the State of Kansas; the Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; the Oregon Short

2

Line Railroad Company, a corporation organized under the laws of the State of Utah; the Oregon-Washington Railroad & Navigation Company, a corporation organized under the laws of the State of Oregon; the Southern Pacific Company, a corporation organized under the laws of the State of Kentucky; the Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin; the Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; the Chicago, Burlington & Quincy Railroad Company, a corporation organized under the laws of the State of Illinois; the Chicago & North Western Railway Company, a corporation organized under the laws of the State of Illinois; the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized under the laws of the State of Wisconsin; the Chicago, Milwaukee & Puget Sound Railway Company, a corporation organized under the laws of the State of Washington; the Denver & Rio Grande Railroad Company, a corporation organized under the laws of the States of Colorado and Utah; the Missouri Pacific Railway Company, a corporation organized under the laws of the States of Missouri, Nebraska and Kansas; the Western Pacific Railway Company, a corporation organized under the laws of the State of California; the San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized under the laws of the State of Utah; the Canadian Pacific Railway Company, a corporation organized under the laws of the Dominion of Canada; the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a corporation organized under the laws of the States of Wisconsin and Minnesota, on their own behalf, as well as on behalf of all other common carriers affected by the order hereinafter referred to, bring this, their petition, against the United States of America, and thereupon complain and say:

3

I.

The Atchison, Topeka & Santa Fe Railway Company owns and operates a line of railway extending from Chicago in the State of Illinois westwardly through the States of Illinois, Iowa, Missouri, Kansas, Colorado, Territories of New Mexico and Arizona, and the State of California, to San Diego, Los Angeles and San Francisco in said state. The Union Pacific Railroad Company owns and operates lines of railway extending from Council Bluffs in the State of Iowa and Kansas City in the State of Missouri westwardly through the States of Nebraska, Kansas, Colorado, Wyoming and Utah to Ogden in said last mentioned state. The Oregon Short Line Railroad Company owns and operates lines of railway extending from Granger in the State of Wyoming and Salt Lake City in the State of Utah westwardly and northerly through the States of Wyoming. Idaho and Utah to Huntington in the State of Oregon. The Oregon-Washington Railroad & Navigation Company owns and operates a line of railway extending from Huntington in the State of Oregon, westwardly and northerly to Portland, in the State of Oregon, and Tacoma and Seattle, in the State of Washington. The Southern Pacific Company controls and operates a line of railway extending from Ogden in the State of Utah through the States of Utah, Nevada and California to San Francisco and Los Angeles and some other Pacific ports in said last-mentioned state, and from Rio Grande in the territory of New Mexico through the territories of New Mexico and Arizona and the State of California to Los Angeles and San Francisco, and thence to Portland in the State of Oregon. The Northern Pacific Railway Company owns and operates lines of railway extending from St. Paul in the State of Minnesota and Ashland in the State of Wisconsin, westwardly through the States of

Minnesota, North Dakota, Montana, Idaho, Washington and Oregon to Tacoma and Seattle on Puget Sound in the State of Washington and Portland in the State of Oregon. The Great Northern Railway Company owns and operates a line of railway extending from St. Paul and Duluth in the State of Minnesota westwardly through said state and the States of North Dakota, Montana, Idaho and Washington to Tacoma and Seattle in said last named state, and to Portland in the State of Oregon. The Chicago, Burlington & Quincy Railroad Company owns and operates lines of railway extending from Chicago in the State of Illinois and St. Louis in the State of Missouri westwardly through said States and the States of Iowa, Nebraska, Kansas, Colorado, Wyoming, South Dakota and Montana to Billings in said last named state. The Chicago & North Western Railway Company owns and operates a line of railway extending from Chicago in the State of Illinois westwardly through the States of Illinois and Iowa to Council Bluffs, where it connects with the line of the Union Pacific Railroad Company, and through the States of Wisconsin, Minnesota, Nebraska, South Dakota and Wyoming to the Town of Lander in said last mentioned state. The Chicago, Milwaukee & St. Paul Railway Company owns and operates a line of railway extending from Chicago in the State of Illinois westwardly and northwestwardly through the States of Illinois, Wisconsin, Minnesota, Iowa, Missouri and South Dakota to Mobridge in said last mentioned state. The Chicago, Milwaukee & Puget Sound Railway Company owns and operates a line of railway extending from Mobridge in the State of South Dakota westwardly through said state and the States of North Dakota, Montana, Idaho and Washington to the Cities of Tacoma and Seattle on Puget Sound in said last mentioned state. The Missouri Pacific Railway Company owns and operates a line of railway extending from St. Louis in the State

5

of Missouri westwardly through said state and the States of Kansas, Nebraska and Colorado to Pueblo and Denver in said last mentioned state. The Denver & Rio Grande Railroad Company owns and operates a line of railway extending from Denver in the State of Colorado westwardly through said state and the State of Utah to Salt Lake City and Ogden in said last named state. The Western Pacific Railway Company owns and operates a line of railway extending from Salt Lake City in the State of Utah westwardly through said state and the States of Nevada and California to San Francisco in said last named state. The San Pedro, Los Angeles & Salt Lake Railroad Company owns and operates a line of railway extending from Salt Lake City in the State of Utah southwestwardly through the States of Utah, Nevada and California to Los Angeles and San Pedro in said last named state. The Canadian Pacific Railway Company owns and operates a line of railway extending from the Atlantic to the Pacific Ocean in the Dominion of Canada and connecting with various lines in the United States. The Minneapolis, St. Paul & Sault Ste. Marie Railway Company owns and operates a line of railway extending from Chicago in the State of Illinois and Sault Ste. Marie in the State of Michigan westwardly and northerly through the States of Wisconsin, Michigan, Minnesota and North Dakota to Portal in the Dominion of Canada. Each and all of said railways have numerous branches extending into and through said states and territories and other states and have a great number of junction points where there is interchange of traffic among them.

II.

The lines of the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Western Pacific

Railway Company, the Oregon-Washington Railroad & Navigation Company, the Northern Pacific Railway Company, the Great Northern Railway Company and the Chicago, Milwaukee & Puget Sound Railway Company extend to the Pacific Coast and are delivering lines by and over which freight is transported to points on said coast, and the lines of said last named companies in connection with certain lines of certain other petitioners herein form lines and through routes for the transportation of passengers and freight to the interior points hereinafter referred to, as well as to said coast points, and in connection with the lines of the Lake Shore & Michigan Southern Railway Company, New York Central & Hudson River Railroad Company, Pittsburg, Fort Wayne & Chicago Railway Company, Pennsylvania Railroad Company, New York, New Haven & Hartford Railroad Company and Boston & Maine Railroad Company, as well as with the lines of various other railroad companies, form through transcontinental routes for the transportation of freight and passengers from points on the Atlantic seaboard and territory west thereof to points on the Pacific Coast.

III.

The respective lines of petitioners connect at many points directly and indirectly with a large number of other different railway lines extending to the Gulf of Mexico and the Atlantic seaboard and to various points in the middle and eastern part of the United States, forming a great number of different lines and routes, controlled by different railroad companies, competing with each other as well as with water and foreign carriers for business to and from the Pacific Coast. All of your petitioners are common carriers by rail and are now and have been for many years engaged in the transportation of passen-

gers and freight over their respective lines of railroad and all of them are subject to the Act to Regulate Commerce and the acts amendatory thereof.

IV.

In the transportation of freight in the territories served by your petitioners and in fixing the rates or tariffs for the transportation thereof it has been found necessary to classify the freight thus transported, and for many years the freight carried over the lines of your petitioners has been divided or grouped in ten classes, known as Classes 1, 2, 3, 4, 5, A, B, C, D and E. Said ten classes include practically all of the freight moved over the lines of your petitioners except such bulky articles as lumber, coal and grain moving in carloads and taking specific rates. The rates charged for moving the freight falling within each class bear and have at all times borne a given relation to each other and at the time of the commencement before the Interstate Commerce Commission of the proceedings hereinafter referred to the class rates from the terminal points of your petitioners on the Mississippi and Missouri Rivers and from Zone No. 2, as described in the orders of the Commission hereinafter referred to, to terminals on the Pacific Coast for the movement of freight falling within said classes, respectively, were as follows:

Classes	1	2	3	4	5	A	B	C	D	E
To California Terminals:										
From										
Chicago	300	260	220	190	165	160	125	100	100	95
St. Paul and Omaha	300	260	220	190	165	160	125	100	100	95
To North Pacific Coast Terminals:										
From										
Chicago	300	260	220	190	165	160	125	100	100	95
St. Paul and Omaha	300	260	220	190	160	160	125	100	95	85

8

V.

From the time of the construction of their respective lines of railway your petitioners in transporting freight to and from terminals on the Pacific Coast and to points in the immediate vicinity thereof have transported the same in competition with carriers by water, said water carriers moving such freight from the Atlantic seaboard in vessels and steamships either directly by water around Cape Horn or through the Straits of Magellan to said Pacific Coast terminals or by water to points on the Atlantic Coast of the Isthmuses of Tehuantepec and Panama, whence said freight is transported by rail to the Pacific Coast of said isthmuses, moving thence in sailing vessels or steamships to said Pacific Coast terminals of your petitioners. The expense incident to the carriage of freight by water in the manner described is now and has heretofore been so low that such water carriers have at all times been able to make and have made and are now making very low rates for the carriage thereof to said Pacific Coast terminal points, and your petitioners in competing with said water carriers for freight moving from the Atlantic to the Pacific Coast have been compelled to lift out of their respective classes and to make specific rates on the great bulk of commodities moving to Pacific Coast terminals, which specific rates so made have been only slightly in excess of the rates charged by the water carriers, the quicker service by your petitioners and the absence of any charge for marine insurance on freight carried over their lines allowing of their maintaining this slight excess. In consequence of the necessity of thus making exceptions to said class rates to the coast, in order to meet the competition thus encountered, nearly all of the tonnage moving to the Pacific Coast has for years moved and is now moving under specific commodity rates so made to

9

meet said exceptional conditions, but as these exceptional conditions were encountered in the full extent only at the Pacific Coast terminal points and were felt only in a gradually diminishing degree as the distance from the Pacific Coast eastwardly into the interor increased, the practice of departing from the said class rates or of lifting specific commodities out of their respective classes and affixing to each a specific rate lower than the class rates for the movement thereof has obtained much less at interior points than at the coast terminals.

VI.

Traffic moves in large volume over the ocean to the Pacific Coast ports of the United States from the Orient and from the Continent of Europe and also moves in like volume from the Orient and from the Continent of Europe to Canadian ports on the Pacific Coast and thence by vessel to the Pacific Coast ports of the United States. This traffic embraces substantially all kinds of goods manufactured or produced in the United States and carried by rail to the Pacific Coast terminals. By reason of the less cost of the transportation of freight by water than by rail it is carried at rates exceedingly low, and in order to compete with the ocean carriers the rail carriers reaching Pacific Coast teminals are forced to make exceedingly low rates on like traffic for the movement thereof. By reason of the competitive forces aforesaid the said Pacific Coast ports became and are markets and distributing centers for all products brought thereto.

VII.

At the Pacific Coast terminal of Los Angeles the lines of the Southern Pacific Company, San Pedro, Los Angeles &

10

Salt Lake Railroad Company and the Atchison, Topeka & Santa Fe Railway Company converge; at San Francisco the lines of the Southern Pacific Company, the Western Pacific Railway Company and the Atchison, Topeka & Santa Fe Railway Company converge; and at Puget Sound ports the lines of the Oregon-Washington Railroad & Navigation Company, the Northern Pacific Railway Company, the Great Northern Railway Company and the Chicago, Milwaukee & Puget Sound Railway Company converge; and in consequence there has been and is active competition between the lines of your petitioners for transcontinental business moving to said terminals, and each of your petitioners has been compelled, in consequence of said competition as well as of the competition of water carriers and of foreign markets herein above referred to, to make to said coast terminals less than reasonable rates for the transportation of traffic thereto.

VIII.

The rates which the competitive influences, above described, have thus compelled your petitioners to make from the Atlantic Seaboard to said Pacific Coast terminals, have in general been applied by your petitioners from all territory in the United States lying north of the Ohio and on and east of the Missouri River, so that a given commodity, whether moving from New York, Pittsburg, Chicago, St. Paul, Kansas City or Omaha to Seattle, Portland or San Francisco moves upon the same rate. The products of said interior territory lying north of the Ohio River and on the east of the Missouri River compete at said Pacific Coast terminals with products of the Atlantic Seaboard and said territory manufactures or produces substantially all of the commodities manufactured or produced

11

upon the Atlantic Seaboard, and in order to enable your petitioners to compete in carrying these manufactures and products with carriers carrying like manufactures and products from the Atlantic Seaboard and contiguous territory, and in order to afford to said territory a market on the Pacific Coast for its products, it has been necessary for your petitioners to make therefrom rates to said terminals upon the commodities moving therefrom as low as the rates made to said terminals over the lines of your petitioners and others from the Atlantic Seaboard.

IX.

Because of the competitive conditions, above referred to and described, your petitioners have been compelled, as heretofore stated, to make and at the time of the amendment of the fourth section of the Act to Regulate Commerce hereinafter referred to had in effect and now have in effect rates from points on the Missouri River and in the vicinity thereof, and from all other eastern defined territories to the Pacific Coast terminals which are much less than the rates from said Missouri River territory to points on their respective lines, like Spokane, Washington, Reno, Nevada, and Phoenix, Arizona, and which are less by much more than 7 per cent. than the rates in effect from the territory embraced within Zone 2, hereinafter referred to, to points on their respective lines, like Spokane, Washington, Reno, Nevada, and Maricopa, Ash Fork and Phoenix, Arizona, and which are less by much more than 15 per cent. than the rates in effect from the territory embraced within Zone 3, hereinafter referred to, to points on their respective lines, like Spokane, Washington, Reno, Nevada, and Maricopa, Ash Fork and Phoenix, Arizona, and which are less by much more than 25 per cent. than the rates in effect from the territory embraced within Zone 4, herein-

12

after referred to, to points on their respective lines, like Spokane, Washington, Reno, Nevada, and Maricopa, Ash Fork and Phoenix, Arizona. The rates which they have been compelled to so make to their Pacific Coast terminals, both class and commodity rates, have been and are much less than reasonable rates and much less than the value of the service rendered in the transportation of the freight carried thereunder to such terminals, and are in no sense a measure or measures of what may lawfully be charged by your petitioners for the carriage of such freight to points on their respective lines where the influence of the competitive conditions above described is not felt at all or is felt only in greatly diminished degree. Many of the intermediate points to which rates higher than the terminal rates have been made are situated in desert country, sparsely settled, where there is little density of traffic, and many of them on a single line of railway and where the competitive influences operating at the terminals are entirely wanting.

X.

In September, 1906, the City of Spokane and others began before the Interstate Commerce Commission a proceeding against the Northern Pacific Railway Company, and others of your petitioners, numbered 879 on the docket of said Commission, complaining of the rates in effect over the lines of said defendants from eastern defined territories to said City of Spokane and vicinity. After a hearing duly had, said Commission, on February 9, 1909, duly made its report and order in said proceeding. Said report is too extended for incorporation in this petition and your petitioners beg leave to refer to the same, appearing in Volume 15 of the reports of said Commission, pages 376 to 426. The order of said Commission made upon said report was in terms as follows:

13

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of February, A. D. 1909.

PRESENT:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
} Commissioners.

No. 879.

City of Spokane, Wash.; Chamber of Commerce of Spokane, Wash.; County of Spokane, Wash., and Spokane Jobbers' Association of Spokane, Wash.,

v.

Northern Pacific Railway Company; Great Northern Railway Company; Union Pacific Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Canadian Pacific Railway Company; Chicago, Burlington & Quincy Railway Company; Chicago & Northwestern Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Pittsburg, Fort Wayne & Chicago Railway Company; Pennsylvania Railroad Company; New York, New Haven & Hartford Railroad Company; Boston & Maine Railroad, and Spokane Falls & Northern Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission being of the opinion that the class rates now maintained by the defendants from St. Paul,

in the State of Minnesota, and Chicago, in the State of Illinois, to Spokane, in the State of Washington, are unjust and unreasonable, and that the rates now applied by said defendants to the transportation of the commodities hereinafter named, in carloads, from St. Paul, Minn., and Chicago, Ill., to Spokane, Wash., are unjust and unreasonable, and being further of the opinion that the class rates named in the third paragraph of this order would be just and reasonable class rates to apply between said points for the future, and that the commodity rates stated in the fourth paragraph of this order would be just and reasonable rates to apply to the transportation of said commodities, in carloads, between said points, and having on the date hereof made and filed a report containing its conclusions thereon:

It is ordered, That the said defendants be, and they are hereby, severally notified and required to cease and desist on or before the 1st day of May, 1909, and for the period of two years thereafter to abstain from charging, demanding, collecting, or receiving, for the transportation of property from St. Paul, aforesaid, and Chicago, aforesaid, to Spokane, Wash., their class rates now in effect, and their rates now imposed for the transportation, in carloads, of the commodities hereinafter named.

It is further ordered, That the Northern Pacific Railway Company, the Great Northern Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago & Northwestern Railway Company, the Union Pacific Railroad Company, the Oregon Railroad & Navigation Company, and the Oregon Short Line Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 1st day of May, 1909, and maintain for a period of not less than two years thereafter, the class rates for the transportation of commodities moving under the Western Classifi-

15

cation from St. Paul, aforesaid, and from Chicago, aforesaid, to Spokane, Wash., which are named below in cents per 100 pounds, to wit:

From—	To Spokane.									
	Class.									
	1	2	3	4	5	A	B	C	D	E
	Cts.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
St. Paul	250	217	183	158	133	133	104	83	79	71
Chicago	300	259	216	179	150	154	121	97	91	82

It is further ordered, That said defendants last above named be, and they are hereby, notified and required to establish and put in force on or before the 1st day of May, 1909, and maintain for a period of not less than two years thereafter, for the transportation of the articles following, from St. Paul, aforesaid, and from Chicago, aforesaid, to Spokane, Wash., the rates, in cents per 100 pounds, following, to wit:

Commodity.	Rates from—	
	St. Paul	Chicago.
	Cents.	*Cents.*
Tin boxes and lard pails, n. o. s.	100	117
Boxed, crated, or jacketed	100	117
Nested in boxes, barrels, or crates	100	117
Carpets, n. o. s.	185	216
Plow points	110	128
Shovels, spades, scoops, in packages	135	157
Fruit jars and glasses	100	117
Canned corn	90	105
Canned beans	90	105
Canned peas	90	105
Belting, cotton or rubber	120	140
Bicycles, boxed	250	292
Bicycles, crated	250	292
Blank books and tablets	125	146
Books, n. o. s., boxed	140	163
Drugs and medicines	150	175
Cotton duck and denims, any quantity	150	175
Glass, common, window, under 68 inches	90	105
Glass, common, window, all sizes, n. o. s.	90	105
Paint, dry, in cans (packed in boxes or barrels), or in barrels, casks, kegs, kits, boxes, or iron drums	90	105
Paint, in oil, in cans (packed in boxes or barrels), or in barrels, cases, kegs, kits, boxes, or iron drums	90	105
White or red lead, dry or in oil, in cans (packed in boxes or barrels), or in barrels, casks, kegs, kits, boxes, or iron drums	90	105
Paper bags, plain	100	117
Paper bags, printed	100	117
Rubber boots and shoes	175	204
Saws, circular, etc., on boards	150	175
Saws, circular, etc., in boxes	150	175
Water heaters, gas or gasoline, instantaneous	170	198
Stoves and ranges (cast iron), cooking, etc.	130	148
Stoves, air-tight heaters (sheet iron)	150	175
Glassware, n. o. s.	120	140
Rope and cordage; cotton, hemp, jute, etc., in bales, boxes or barrels	125	146
Wheelbarrows, k. d., flat	90	105
Windmills, k. d.	135	157
Wire, copper	110	128
Wire, fencing, in rolls	80	93
Woodenware, in packages	125	146

The above commodity rates are in carloads, upon the same minimum as is applied to the transportation of the same commodities from said St. Paul and Chicago, to Seattle, Wash.

The class rates prescribed by said Commission in said order were made effective by the carriers as required therein and said rates so prescribed are now and ever since have been in effect. A supplemental petition having been thereafter filed by complainants in said proceeding praying for the establishment by said Commission of additional commodity rates, said Commission postponed the effective date of so much of said order as fixed specific commodity rates until a further hearing should be had on such supplemental petition and until

17

a further order should be made. A further hearing having been had on said supplemental petition, the Commission on June 7, 1910, duly made its supplemental report in said proceeding. Said supplemental report is too extended for incorporation in this petition and your petitioners beg leave to refer to the same, appearing in Volume 19 of the reports of said Commission, at pages 162 to 217. No order establishing the rates suggested in said supplemental report was made or has ever been made by said Commission, but the carriers were required to compile data showing what their loss in revenue would be by the application of the rates suggested in said supplemental report.

XI.

In August, 1908, the Railroad Commission of Nevada began before the Interstate Commerce Commission a proceeding against the Southern Pacific Company and others complaining of rates over the lines of the defendants in said proceeding from eastern defined territory to Reno, Nevada, and vicinity, said proceeding being numbered 1665 on the docket of said Commission. After hearing duly had, said Commission, on June 6, 1910, made its report and order in said proceeding. Said report is too extended for incorporation in this petition and your petitioners beg leave to refer to the same, appearing in Volume 19 of the reports of said Commission, pages 238 to 256. The order of the Commission made in said proceeding was in terms as follows:

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of June, A. D. 1910.

PRESENT:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
} Commissioners.

No. 1665.

Railroad Commission of Nevada

v.

Southern Pacific Company; Nevada & California Railway Company; Union Pacific Railroad Company; Chicago & North Western Railway Company; The Lake Shore & Michigan Southern Railway Company; and The New York Central & Hudson River Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, and having found that the above-named defendants' class rates, published, charged, and collected for transportation of freight embraced in the lettered and numbered classes in effect at the date the complaint was filed and now in effect as defined in Western Classification Nos. 44, I. C. C. No. 2, and 48, I. C. C. No. 6, from New York City, N. Y., and common points; Buffalo, N. Y., and other Pittsburg-Buffalo

19

common points; Toledo, and other Cincinnati-Detroit common points, as designated in Northern Pacific Tariff No. 23500, I. C. C. No. 3295, Chicago, Ill., and other points in Group D; Clinton, Iowa, and other points in Group E; Omaha, Nebr., and other points in Group F; Grand Island, Nebr., and other points in Group G; Denver, Colo., and other points in Group J, as designated in Transcontinental Freight Bureau West Bound Tariff 1-K, I. C. C. No. 920, to Reno, Elko, and Winnemucca, and other points in Nevada upon the main line of the Southern Pacific Company, are unreasonable and unjust:

It is ordered, That the above-named defendants be, and they are hereby, notified and required to cease and desist on or before the 1st day of October, 1910, and for a period of not less than two years thereafter abstain, from charging and collecting their present class rates for transportation of freight embraced in the numbered and lettered classes as defined in Western Classification No. 48, I. C. C. No. 6, from New York, N. Y., and common points; Buffalo, N. Y., and other Pittsburg-Detroit common points, as designated in Northern Pacific Tariff No. 23500, I. C. C. No. 3295, Chicago, Ill., and other points in Group D; Clinton, Iowa, and other points in Group E; Omaha, Nebr., and other points in Group F; Grand Island, Nebr., and other points in Group G; Denver, Colo., and other points in Group J, as designated in Transcontinental Freight Bureau West Bound Tariff 1-K, No. 920, to Reno, Elko, and Winnemucca, and other points in Nevada upon the main line of the Southern Pacific Company.

And it is further ordered, That said above-named defendants be, and they are hereby, notified and required to establish on or before the 1st day of October, 1910, and maintain in force thereafter during a period of not less than two years, class rates for transportation of commodities embraced in the numbered and lettered classes in Western Classification No.

48, I. C. C. No. 6, to Reno, Nev., and points east thereof upon the main line of said Southern Pacific Company to but not including Winnemucca, Nev., from points indicated in the following table that shall not exceed the rates therein specified, per 100 pounds:

From—	Class 1	2	3	4	5	A	B	C	D	E
Denver and other points in Group J *a*	$2.10	$1.82	$1.54	$1.33	$1.12	$1.12	$0.87	$0.70	$0.66	$0.60
Grand Island and other points in Group G *a*	2.30	2.00	1.68	1.45	1.22	1.22	.96	.76	.73	.65
Omaha and other points in Group F *a*	2.50	2.17	1.83	1.58	1.33	1.33	1.04	.83	.79	.71
Clinton and other points in Group E *a*	2.80	2.42	2.03	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago and other points in Group D *a*	2.90	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Toledo and other Cincinnati-Detroit common points *b*	3.05	2.63	2.19	1.81	1.52	1.56	1.23	.98	.92	.83
Buffalo and other Pittsburg-Buffalo common points *b*	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.86
New York and common points *b*	3.50	3.01	2.49	2.00	1.67	1.75	1.38	1.11	1.03	.93

a As designated in Transcontinental Freight Bureau Westbound Tariff 1—K, I. C. C., No. 920.
b As designated in Nor. Pac. No. 23500, I. C. C. No. 3295.

And from the same points to Winnemucca, Nev., and to all points east thereof on the main line of the Southern Pacific Company to the Utah-Nevada state line, rates that shall not exceed the following, per 100 pounds:

From—	Class 1	2	3	4	5	A	B	C	D	E
Denver and other points in Group J *a*	$2 00	$1.72	$1.46	$1.26	$1.06	$1.06	$0.83	$0.67	$0.63	$0.57
Grand Island and other points in Group G *a*	2.19	1.90	1.60	1.38	1.16	1.16	.91	.72	.69	.62
Omaha and other points in Group F *a*	2.38	2.06	1.74	1.50	1.26	1.26	.99	.79	.75	.67
Clinton and other points in Group E *a*	2.66	2.30	1.93	1.62	1.36	1.39	1.08	.86	.82	.74
Chicago and other points in Group D *a*	2.75	2.38	1.99	1.66	1.40	1.43	1.07	.89	.85	.76
Toledo and other Cincinnati-Detroit common points *b*	2.90	2.50	2.08	1.72	1.44	1.48	1.17	.93	.87	.79
Buffalo and other Pittsburg-Buffalo common points *b*	3.04	2.62	2.18	1.78	1.49	1.44	1.22	.98	.91	.82
New York and common points *b*	3.33	2.86	2.37	1.90	1.59	1.66	1.31	1.05	.98	.88

a As designated in Transcontinental Freight Bureau Westbound Tariff 1—K, I. C. C., No. 920.
b As designated in Nor. Pac. No. 23500, I. C. C. No. 3295.

The class rates prescribed in said order were made effective by the defendants in said proceeding as required therein. Said

21

order made no provision as to commodity rates, but the defendants in said proceeding were required to prepare and furnish to the Commission certain additional data upon which the Commission might act in fixing such rates.

XII.

In October, 1908, the Maricopa County Commercial Club began before the Interstate Commerce Commission a proceeding against the Santa Fe, Prescott & Phoenix Railway Company and others, complaining of the rates over lines of the defendants in said proceeding from eastern defined territory to Phoenix, Arizona, and vicinity, said proceeding being numbered 1796 on the docket of said Commission. After hearing duly had the Commission on June 6, 1910, made its report and order in said proceeding. Its report appears in Volume 19 of the reports of said Commission, at pages 257 and 258, to which your petitioners beg leave to refer. Its order was in terms as follows:

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of June, A. D. 1910.

PRESENT:

Martin A. Knapp,
Judson C. Clements,
Charles A. Prouty,
Francis M. Cockrell,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
} Commissioners.

No. 1796.

Maricopa County Commercial Club

v.

Santa Fe, Prescott & Phoenix Railway Company Et Al.

This case being at issue upon complaint and answers of the defendants on file, and a full and complete hearing and a full investigation of the matters and things involved in said complaint having been had, and the same having been submitted by the parties, and the Commission, after such full hearing, being of the opinion that the class rates of the defendants hereinafter named from Kansas City, Mo., St. Louis, Mo., Chicago, Ill., Cincinnati, Ohio, and Pittsburg, Pa., to Phoenix, Ariz., on classes 1, 2, 3, 4, 5, A, B, C, D, and E, in effect at the time of the filing of the complaint herein on October 13, 1908, and applying to the articles described in the classification then in effect, are unjust and unreasonable, which said rates so found to be unjust and unreasonable are per 100 pounds as set forth in the following table:

Classes	1	2	3	4	5	A	B	C	D	E
To Phoenix from—										
Kansas City	$3.41	$2.98	$2.68	$2.16	$1.90	$1.90	$1.63	$1.37	$1.15	$1.07
St. Louis	3.41	2.98	2.75	2.21	1.95	1.97	1.63	1.39	1.15	1.07
Chicago	3.61	3.14	2.87	2.26	2.00	2.05	1.71	1.46	1.21	1.12
Cincinnati	3.61	3.14	2.87	2.31	2.02	2.06	1.71	1.46	1.21	1.12
Pittsburg	3.91	3.43	3.07	2.44	2.14	2.17	1.79	1.54	1.31	1.22

And the Commission after such full hearing having determined that the class rates set forth in the following table will be the just and reasonable rates to be prescribed and thereafter observed by the carriers hereinafter named between the points above named, and applying to the numbered and lettered classes therein set forth, on the articles moving under said class rates as described in the existing classification covering the same, to wit:

	Class rates per hundred pounds.									
Class	1	2	3	4	5	A	B	C	D	E
To Phoenix from—										
Kansas City	$2.50	$2.17	$1.83	$1.58	$1.33	$1.33	$1.04	$0.83	$0.79	$0.71
St. Louis	2.80	2.42	2.03	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago	2.90	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Cincinnati	3.05	2.63	2.19	1.81	1.52	1.56	1.23	.98	.92	.83
Pittsburg	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.86

23

It is ordered, That The Baltimore & Ohio Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; and St. Louis & San Francisco Railroad Company, shall cease and desist, on or before the 1st day of October, 1910, and for a period of not less than two years thereafter abstain from charging, demanding, collecting, or receiving for the transportation of property from Pittsburg, Pa., to Phoenix, Ariz., the rates per 100 pounds, on the articles moving under the respective classes indicated in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.91	$3.43	$3.07	$2.44	$2.14	$2.17	$1.79	$1.54	$1.31	$1.22

It is further ordered, That the Erie Railroad Company; Chicago & Erie Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steam-

ship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; and St. Louis & San Francisco Railroad Company, shall cease and desist on or before the 1st day of October, 1910, and for a period of not less than two years thereafter abstain from charging, demanding, collecting, or receiving for the transportation of property from Cincinnati, Ohio, to Phoenix, Ariz., the rates per 100 pounds on the articles moving under the respective classes indicated in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.61	$3.14	$2.87	$2.31	$2.02	$2.06	$1.71	$1.46	$1.21	$1.12

It is further ordered, That The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; and St. Louis & San Francisco Railroad Company, shall cease and desist, on or before the 1st day of October, 1910, and for a period of not less than two years thereafter, abstain from charging, demanding, collecting, or receiving for the transportation of property from Chicago, Ill., to Phoenix, Ariz., the rates per 100 pounds on the articles moving under the respective classes indicated in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.61	$3.14	$2.87	$2.26	$2.00	$2.05	$1.71	$1.46	$1.21	$1.12

It is further ordered, That the Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Missouri, Kansas & Texas Railway Company; The Missouri Pacific Railway Company; St. Louis & San Francisco Railroad Company; The Wabash Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; and Santa Fe, Prescott & Phoenix Railway Company, shall cease and desist on or before the 1st day of October, 1910, and for a period of not less than two years thereafter, abstain from charging, demanding, collecting, or receiving for the transportation of property from St. Louis, Mo., to Phoenix, Ariz., the rates per 100 pounds, on the articles moving under the respective classes indicated in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.41	$2.98	$2.75	$2.21	$1.95	$1.97	$1.63	$1.39	$1.15	$1.07

It is further ordered, That The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & New Orleans Railroad Company; The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; The Missouri Pacific Railway Company; and The Texas & Pacific Railway Company, shall cease and desist, on or before the 1st day of

October, 1910, and for a period of not less than two years thereafter, abstain from charging, demanding, collecting, or receiving for the transportation of property from Kansas City, Mo., to Phoenix, Ariz., the rates per 100 pounds on the articles moving under the respective classes indicated in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.41	$2.98	$2.68	$2.16	$1.90	$1.90	$1.63	$1.37	$1.15	$1.07

It is further ordered, That The Baltimore & Ohio Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; Chicago & Alton Railroad Company; Santa Fe, Prescott & Phoenix Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; Southern Pacific Company; and The Maricopa & Phoenix Railway Company, be, and they are hereby, notified and required to establish, on or before the 1st day of October, 1910, and maintain in force thereafter, as their respective routes may run, during a period of not less than two years, class rates for the transportation of articles moving in the numbered and lettered classes under the present Western Classification from Pittsburg, Pa., to Phoenix, Ariz., which shall not exceed per 100 pounds the rates set forth in the following table:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.20	$2.76	$2.29	$1.87	$1.57	$1.62	$1.28	$1.03	$0.96	$0.86

27

It is further ordered, That the Erie Railroad; Chicago & Erie Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company; Southern Pacific Company; and The Maricopa & Phoenix Railway Company, be, and they are hereby, notified and required to establish on or before the 1st day of October, 1910, and maintain in force thereafter, as their respective routes may run, during a period of not less than two years, class rates for the transportation of articles moving in the numbered and lettered classes under the present Western Classification, from Cincinnati, Ohio, to Phoenix, Ariz., which shall not exceed per 100 pounds the rates set forth in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$3.05	$2.63	$2.19	$1.81	$1.52	$1.56	$1.23	$0.98	$0.92	$0.83

It is further ordered, That The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; The Wabash Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Chicago & North Western Railway Company; The Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern

Railway Company; The Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; and St. Louis & San Francisco Railroad Company, be, and they are hereby, notified and required to establish on or before the 1st day of October, 1910, and maintain in force thereafter, as their respective routes may run, during a period of not less than two years, class rates for the transportation of articles moving in the numbered and lettered classes under the present Western Classification, from Chicago, Ill., to Phoenix, Ariz., which shall not exceed per 100 pounds the rates set forth in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$2.90	$2.51	$2.09	$1.75	$1.47	$1.50	$1.18	$0.94	$0.89	$0.80

It is further ordered, That the Chicago & Alton Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Missouri, Kansas & Texas Railway Company; The Missouri Pacific Railway Company; St. Louis & San Francisco Railroad Company; The Wabash Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Texas & New Orleans Railroad Company, be, and they are hereby, notified and required to establish on or before the 1st day of October, 1910, and maintain in force thereafter, as their respective routes may run, during a period of not less than two years, class rates for the

transportation of articles moving in the numbered and lettered classes under the present Western Classification, from St. Louis, Mo., to Phoenix, Ariz., which shall not exceed per 100 pounds the rates set forth in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$2.80	$2.42	$2.03	$1.71	$1.43	$1.46	$1.14	$0.91	$0.86	$0.78

And it is further ordered, That The Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; Missouri, Kansas & Texas Railway Company; The Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company; The Maricopa & Phoenix Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & New Orleans Railroad Company; The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; and The Texas & Pacific Railway Company, be, and they are hereby, notified and required to establish on or before the 1st day of October, 1910, and maintain in force thereafter, as their respective routes may run, during a period of not less than two years, class rates for the transportation of articles moving in the numbered and lettered classes under the present Western Classification, from Kansas City, Mo., to Phoenix, Ariz., which shall not exceed per 100 pounds the rates set forth in the following table, to wit:

Class	1	2	3	4	5	A	B	C	D	E
Rate	$2.50	$2.17	$1.83	$1.58	$1.33	$1.33	$1.04	$0.83	$0.79	$0.71

The class rates prescribed in said order were made effective by the defendants in said proceeding as required by said order. No order was made as to commodity rates to the territory involved in said proceeding, but the defendants therein were required to furnish to the Commission at a subsequent date additional data upon which said Commission might act in fixing such commodity rates.

30

XIII.

By the Act of Congress, approved June 18, 1910, the fourth section of the Act to Regulate Commerce was amended so as to forbid the charging by common carriers subject to the provisions of said act of a greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. It was provided, however, that upon application to the Interstate Commerce Commission such common carriers might in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property and that the Commission might from time to time prescribe the extent to which such common carriers might be relieved from the operation of said Section 4. And it was further provided that no rates or charges lawfully existing at the time of the passage of said amendatory act should be required to be changed by reason of the provisions of said Section 4 prior to the expiration of six months after the passage of said amendatory act, nor in any case where application should have been filed before the Commission, in accordance with the provisions of said section, until a determination of such application by said Commission. After the passage of the law amending the fourth section, as above shown, the Commission promulgated its certain order, of date October 14, 1910, whereby it prescribed the form under which it required the carriers within said period of six months to file their applications for relief from the provisions of said fourth section. Among other things the said form provided that the carriers should state that they desired to carry rates to the further point lower than rates concurrently in effect to inter-

31

mediate points and required them to state that the rate to the intermediate points should not be more than a certain number of cents per 100 pounds, per ton, per car or per package in excess of the rates to the further point. The rates which the competitive conditions above described have compelled your petitioners to make to the Pacific Coast terminals, being less for the longer haul to the Pacific Coast terminals than the rates in effect to interior points, such as Spokane, Washington, Reno, Nevada, Phoenix, Arizona, and other interior points, all of which last described rates were just and reasonable rates, your petitioners, notwithstanding they were advised by counsel that said Section 4 as amended by the act of June 18, 1910, was unconstitutional and void, as involving an unlawful delegation to said Commission of legislative power, and notwithstanding that said act, even if constitutional, did not require your petitioners' applications to set forth the differential which they sought to maintain between the lower long haul rate and the higher short haul rate, yet in obedience to said Commission's order felt constrained because of the penalties in said Act to Regulate Commerce against any violation of any of the provisions thereof to file and did file with the Interstate Commerce Commission within the time allowed by said act as amended, applications for leave to continue in effect said existing lower rates for the longer haul to the Pacific Coast terminals than the just and reasonable rates fixed by their tariffs for the shorter haul to said intermediate points. Said applications were numbered 205, 342, 343, 344, 349, 350 and 352 on the fourth section docket of said Commission and copies thereof (omitting from such copies the tariffs thereto attached) are hereto attached marked respectively Exhibits A, B, C, D, E, F and G, and made a part of this petition.

32

XIV.

Thereafter, on March 20, 1911, said applications came on for hearing before said Commission and upon said hearing your petitioners submitted evidence in support of said applications. By the evidence so submitted by your petitioners it was established that said lower rates to said Pacific Coast Terminals were compelled by the competitive conditions hereinabove described and that said rates were less than your petitioners might otherwise reasonably exact for the service rendered thereunder, and that it was necessary for your petitioners to continue said rates in effect in order to meet said competitive conditions. Thereafter and on June 22, 1911, said Commission made its reports and on July 31, 1911, issued its certain order upon said applications and your petitioners aver that by said reports the Commission found that said lower rates to Pacific Coast terminals were compelled by said competitive conditions and were necessary to allow of the continued participation by your petitioners in the business of moving traffic to such terminals. Said reports appear as opinions Nos. 1623 and 1627 of said Commission, at pages 329 to 384 and 400 to 427 of Volume 21 of the reports of said Commission, and copies thereof are hereto attached. The order of said Commission was in terms as follows:

33

ORDER.

At a General Session of the Interstate Commerce Commission, held at its Office in Washington, D. C., on the 31st day of July, A. D. 1911.

PRESENT:

Judson C. Clements,
Charles A. Prouty,
Franklin K. Lane,
Edgar E. Clark,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

FOURTH SECTION ORDER NO. 124.

In the Matter of the Applications, Nos. 205, 342, 343, 344, 349, 350 and 352, on behalf of the Transcontinental Freight Bureau, by R. H. Countiss, Agent, for relief from the provisions of the Fourth Section of the Act to Regulate Commerce as amended June 18, 1910, with respect to rates made from Eastern points of shipment which are higher to intermediate points than to Pacific Coast terminals.

COMMODITY RATES.

These applications, as above numbered, on behalf of the Transcontinental Freight Bureau, ask for authority to continue rates from Eastern points of shipment which are higher to intermediate points in Canada and in the States of Arizona, New Mexico, Idaho, California, Montana, Nevada, Oregon, Utah, and Washington, and other states east thereof, than to Pacific Coast terminals.

Full investigation of the matters and things involved in these petitions, in so far as they concern westbound commodity rates, having been had,

It is ordered, That for the purposes of the disposition of

these applications, the United States shall be divided into five zones, as described in the following manner:

(The transcontinental groups hereinafter described are as specified in R. H. Countiss, Agent's, Transcontinental Tariff I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called Line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of Transcontinental Group F, to the intersection of the Arkansas and Oklahoma state line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2 embraces all territory in the United States lying east of Line No. 1 and west of a line called Line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the Straits of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of Transcontinental Group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of Transcontinental Group C; thence follows the east boundary of Group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of Line No. 2 and north of the south boundary of Transcontinental Group C, and on and west of Line No. 3, which is the Buffalo-Pittsburg line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of Trunk Line Freight Association territory; thence follows the Ohio River to Huntington, W. Va.

35

Zone No. 4 embraces all territory in the United States east of Line No. 3 and north of the south boundary of Transcontinental Group C.

Zone No. 5 embraces all territory south and east of Transcontinental Group C.

It is further ordered, (1) That those portions of the above numbered applications that request authority to maintain higher commodity rates from points in Zone No. 1 to intermediate points than to Pacific Coast terminals be, and the same are hereby, denied, effective November 15, 1911; (2) that petitioners herein be, and they are hereby, authorized to establish and maintain, effective November 15, 1911, commodity rates from all points in zones numbered 2, 3 and 4, as above defined, to points intermediate to Pacific Coast terminals that are higher to intermediate points than to Pacific Coast terminals; provided, that the rates to intermediate points from points in zones numbered 2, 3 and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific Coast terminals by more than 7 per cent. from points in Zone No. 2, 15 per cent. from points in Zone No. 3, and 25 per cent. from points in Zone No. 4.

The Commission does not hereby approve any rates that may be established under this authority, all such rates being subject to complaint, investigation, and correction if they conflict with any other provisions of the act.

By the Commission:

[SEAL] JUDSON C. CLEMENTS,
Chairman.

XV.

Your petitioners allege that the fourth section of said Act to Regulate Commerce as amended by said act of June, 1910,

36

is unconstitutional and void, in that by said section as amended Congress has assumed to delegate legislative powers to said Commission; that by said section as so amended said Commission is empowered arbitrarily to grant or withhold leave to charge less for the longer than for the shorter haul of like commodities over the same line in the same direction and that no standard is supplied by said section or by any of the provisions of said Act to Regulate Commerce for the guidance or control of said Commission in passing upon applications made thereunder for leave to charge such lower rates for the longer than for the shorter haul, and that therefore said order of the Commission is unlawful and void. It was the duty of said Commission in considering said applications of your petitioners to have applied thereto the provisions of Section 4 of said act as the same stood prior to said amendment as aforesaid and as the same had been construed by the Supreme Court of the United States, and that under the provisions of said Section 4 as the same stood prior to said amendment your petitioners were entitled to an order granting the relief prayed for.

XVI.

Assuming said Section 4 of said Act to Regulate Commerce as amended by said Act of June 18, 1910, to be a constitutional enactment, the order of the Commission of July 31, 1911, deprives your petitioners of their constitutional right to engage in the business of carrying traffic to said Pacific Coast terminals, in that it forces your petitioners either to forego said traffic or to obtain the same at the expense of lowering their rates to intermediate and other interior points so as to make said rates to said points less than your petitioners are rightfully entitled to receive, and unless said order of July 31, 1911, shall be set aside and annulled by this court, your

37

petitioners can continue in the business of carrying traffic to said Pacific Coast terminals only by reducing all rates to intermediate territory to a point where the same shall be less than your petitioners are rightfully entitled to receive.

XVII.

Your petitioners respectfully show that while they are left free by said order of July 31, 1911, to continue to charge just and reasonable rates from Eastern defined territory to interior points, they are allowed to do this only in case they shall advance their rates from Missouri River territory to said Pacific Coast terminals to a point where they shall equal your petitioners' rates from Missouri River territory to intermediate points, and only in the event that they shall so raise their rates to said terminals from points within Zones 2, 3 and 4 as described in said order, that the rates from said zones, respectively, to intermediate points shall not exceed them by more than the differentials fixed in said order of July 31, 1911, and your petitioners aver that to so raise their rates to Pacific Coast terminals would make such Pacific Coast terminal rates greatly in excess of the competitive rates to said terminals hereinabove described and would cause to be diverted to the water carriers and lost to your petitioners practically all of the traffic now moving over the lines of your petitioners to said Pacific Coast terminals, and while this effect would not be immediate because the number of vessels now available for this service is not sufficient to carry the whole of such traffic, such an advance would result in the immediate loss to your petitioners of a large part of said terminal traffic and in the ultimate loss of practically the whole thereof as soon as vessels could be built and equipped to carry the same.

XVIII.

Though the rates now charged by your petitioners on transcontinental traffic moving to Pacific Coast terminals are not fully compensatory and are not as great as your petitioners might reasonably exact for the service rendered, they yield your petitioners something in excess of the out-of-pocket expense incident to the handling of the traffic moving under said rates, and therefore contribute something to the return which your petitioners are entitled to earn upon their properties, and said order of said Commission in requiring your petitioners to forego said terminal business or to reduce their rates to interior points below the just and reasonable rates which they are entitled to charge will result in the taking of your petitioners' property without due process of law and is confiscatory and void. If in order to continue in the business of moving traffic to the Pacific Coast terminals your petitioners were to comply with the requirements of said order of July 31, 1911, by depressing their rates to intermediate points so that the same should not exceed from Missouri River territory the rates from said territory to the Pacific Coast terminals and so that the same should not exceed from the other zones described in said order the rates to said Pacific Coast terminals by more than the differentials prescribed therein, your petitioners would be required to accept the business moving to interior points at rates so low that the entire revenue therefrom, together with all other revenues accruing to your petitioners, would not be a fair return upon the fair value of your petitioners' property devoted to the public service.

39

XIX.

Your petitioners further say that assuming said Section 4 as amended by said Act of June 18, 1910, to be a constitutional enactment, it became the duty of the Commission when the compelling competitive conditions hereinabove described were established on said hearing to make an order granting said applications authorizing your petitioners to depart from the long and short haul rule of the fourth section. Said section as amended, if constitutional, does not authorize or empower said Commission to fix the differential which shall be maintained between said compelled rates and the just and reasonable rates which your petitioners are entitled to charge at interior points, and said order of July 31, 1911, in requiring that the rates to such terminal points shall bear to said rates to intermediate points the relations prescribed in and by said order is unauthorized and void.

XX.

Your petitioners further say that the rates now in effect both to interior points and to the Pacific terminals, while they have varied from time to time to meet the exigencies of commerce, are all based and have for many years been based upon a well-defined principle and the commerce of the territory to which said rates apply has been adjusted to said principle and has grown and prospered under the application of it. Such principle consists in the establishment of just and reasonable standard class rates applying on practically the whole of the tonnage moving to said territories (except, as hereinbefore stated, such bulky tonnage as lumber, coal and grain, the rates upon which are not involved in these proceedings) and

40

in making only such exceptions to such standard rates in the way of specific commodity rates as competition has from time to time required your petitioners to make; and there is no occasion or justification for departing from said standard class rates except as competition does require it. The order of July 31, 1911, requires your petitioners (unless they shall elect to forego said terminal traffic as hereinabove stated) to supersede said just and reasonable standard class rates as to the great volume of tonnage moving to said interior points by establishing to said interior points, from Missouri River territory, the special commodity rates now in effect at said terminal points, and to establish from Zones 2, 3 and 4 as described in said order to said intermediate points the rates now in effect at said terminals plus the differentials allowed by said order, although competition has never required your petitioners to make such rates at said intermediate points, and although such rates are less than just and reasonable rates to said intermediate points, and although the Commission has never in fact found them to be just or reasonable rates to said intermediate points. As a consequence, the principle of fixing standard class rates to be charged as maxima to interior territory, except when competitive conditions require a departure from them, is overthrown and the rates which your petitioners are compelled to accept at terminal points are wrongfully made the measure of what they may lawfully receive at interior points.

To comply with the order of the Commission upon said applications your petitioners will be obliged to readjust rates now in effect from Missouri River territory and all points east thereof, either by raising rates to said terminal points and thus diverting and losing terminal traffic to competitive water carriers or by lowering rates to intermediate and other interior points upon their respective lines to less than reason-

41

able rates, and will be forced to move traffic in accordance with such changed rates and will lose a large amount of revenue to which they are lawfully entitled and which they will be unable thereafter to demand or collect. The adjustment proposed in the order of the Commission will also disorganize business conditions throughout the territory affected by said order and greatly prejudice producers and shippers therein and result in the destruction of business in many localities.

XXI.

In all of said Missouri River territory and in territory east thereof and in territory west thereof there are now in effect numerous rates, reasonable in and of themselves, for the service to be performed under them, from points in said territories to the territory intermediate to the Pacific Coast. Yet, because of the order of the Commission numerous rates, so reasonable in and of themselves will, (unless your petitioners elect to forego said terminal traffic as aforesaid), have to be so reduced as to make them less than reasonable for the service performed, and this without investigation. Your petitioners are entitled before these rates are reduced to have them investigated by the Commission and they may be rightfully reduced only after such investigation and after determination that they are unreasonable on the part of the Commission. Yet, without such investigation or determination, and solely because of said order, such reduction must be made, unless your petitioners abandon much of their terminal traffic as aforesaid. And your petitioners aver that the Commission in passing upon said applications acted arbitrarily and without authority of law in fixing zones and percentages applicable to all traffic regardless of whether or not the percentages fixed permitted the moving of traffic to terminal points while at

the same time securing reasonable rates to intermediate points.

XXII.

Your petitioners say that if said orders are not enjoined or set aside by this court they will on the 15th day of November become effective and remain effective for two years thereafter, and that thereafter your petitioners will have to adjust their tariffs and make their charges in accordance with said order; that irreparable loss will thereby result to each of your petitioners, in that the loss of revenue occasioned by the diversion to water carriers of terminal business, or by reason of the lower rates which your petitioners will be required to make to intermediate points will be many hundreds of thousands of dollars, and your petitioners will thereby suffer irreparable damage.

XXIII.

Wherefore, your petitioners pray that due service of this petition be made on respondent herein commanding it to answer the matter thereof (but not under oath, answer under oath being expressly waived); that notice of the application for injunction hereby made be duly served on the respondent, on the Attorney General of the United States, and on the Interstate Commerce Commission; that pending the final hearing of this petition temporary injunction shall issue enjoining the defendant and the Interstate Commerce Commission and its members, their agents, servants and representatives, from enforcing the said order of July 31, 1911, and from taking any steps or instituting any proceedings for the enforcement thereof, or of said fourth section as amended, and that, after hearing a decree be entered herein setting

43

aside and annulling the said order and perpetually enjoining the enforcement thereof, and declaring said fourth section as amended to be unconstitutional and void, and for such other and further relief, general and special, in the premises as justice and equity may require.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

By Robert Dunlap

T. J. Norton

Its Solicitors.

UNION PACIFIC RAILROAD COMPANY.

By S. H. Loomis

H. A. Scandrett

F. C. Dillard

Its Solicitors.

OREGON SHORT LINE RAILROAD COMPANY.

R. J. Williams

By H. A. Scandrett

F. C. Dillard

Its Solicitors.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY.

W. W. Cotton

By H. A. Scandrett

F. C. Dillard

Its Solicitors.

44

SOUTHERN PACIFIC COMPANY.

By G. H. Dunbrow
H. A. Scandrett
F. B. Dillard
Its Solicitors.

NORTHERN PACIFIC RAILWAY COMPANY.

By C. W. Bunn
Charles Donnelly
Its Solicitors.

GREAT NORTHERN RAILWAY COMPANY.

By R. A. Jackson
E. C. Lindley
Its Solicitors.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

By C. M. Dawes
R. B. Scott
Its Solicitors.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

By E. M. Hazzer
C. C. Wright
Its Solicitors.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

By Burton Hanson

Wm. Ellis

Its Solicitors.

CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY.

By Burton Hanson

Wm. Ellis

Its Solicitors.

DENVER & RIO GRANDE RAILROAD COMPANY.

By James C. Jeffery

Its Solicitors.

MISSOURI PACIFIC RAILWAY COMPANY.

By H. L. Clardy

Its Solicitors.

WESTERN PACIFIC RAILWAY COMPANY.

By F. H. McCutcheon

James C. Jeffery

Its Solicitors.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY.

By A. S. Halstead.....

.....

Its Solicitors.

CANADIAN PACIFIC RAILWAY COMPANY.

By A. H. Bright.....

.....

Its Solicitors.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY,

By A. H. Bright.....

.....

Its Solicitors.

GARDINER LATHROP,
WM. F. HERRIN,
Of Counsel.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

F. H. Plaisted ..... being duly sworn, deposes and says that he is an officer of the Oregon Short Line R.R. Co. Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

F. H. Plaisted .....

Subscribed & sworn to before me this 28th day of September 1911.

Wm. A. Rawson .....

Notary Public.

Notarial Seal

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

J. A. Munroe ..... being duly sworn, deposes and says that he is an officer of the Union Pacific R.R. Co. Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

J. A. Munroe .....

Subscribed & sworn to before me this 28th day of September 1911

Wm. A. Rawson .....

Notary Public.

(Notarial Seal)

48

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

J. G. Woodworth ... being duly sworn, deposes and says that he is an officer of the ... Northern Pacific Ry. ... Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

J. G. Woodworth

Subscribed & sworn to before me this 29th day of September, 1911

Wm. A. Rawson

(Notarial Seal) *Notary Public.*

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

F. B. Houghton ... being duly sworn, deposes and says that he is an officer of the Atchison, Topeka & Santa Fe Ry. Co. ... Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

F. B. Houghton

Subscribed & sworn to before me this 29th day of September 1911

John A. McDonald

Notary Public.

(Notarial Seal)

49

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

E. D. Sewall ..... being duly sworn, deposes and says that he is an officer of the Chicago, Milwaukee & Puget Sound Ry Co. Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

E. D. Sewall

E. D. Millard
Notary Public.

Notarial Seal

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

P. C. Stohr ..... being duly sworn, deposes and says that he is an officer of the Oregon, Washington & Ro. Navigation Co. Company, one of the above named petitioners, and makes this affidavit on behalf of said railway company and the other petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated as to information and belief and as to those matters he believes them to be true.

P. C. Stohr

Subscribed & sworn to before me this 29th day of September 1911

John A. McDonald
Notary Public.

Notarial Seal

EXHIBIT "A."

I. C. C. NO. 205.

APPLICATION No. 1.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH THE FOLLOWING TARIFFS:

RAILROAD REFERENCE	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
Tariff No. 1-L and Supplements 1, 2, and 3 thereto.....	No. 13 and Supplements 1, 2 and 3 thereto....	C. W. Bullen
	No. 225 and Supplements 1, 2 and 3 thereto....	J. F. Tucker
	No. 929 and Supplements 1, 2 and 3 thereto....	R. H. Countiss
Tariff No. 4-H and Supplements 1, 2, 3 and 4 thereto.....	No. 14 and Supplements 1, 2, 3 and 4 thereto..	C. W. Bullen
	No. 226 and Supplements 1, 2, 3 and 4 thereto..	J. F. Tucker
	No. 928 and Supplements 1, 2, 3 and 4 thereto..	R. H. Countiss
Circular No. 16-F and Supplement 4 thereto...	No. 9 and Supplement 4 thereto.....	C. W. Bullen
	No. 168 and Supplement 4 thereto.....	J. F. Tucker
	No. 915 and Supplement 4 thereto.....	R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agents and Attorneys or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petition the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from eastern shipping points designated to the Pacific Coast terminal points and other points designated, lower than rates concurrently in effect from intermediate points, and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of:

Competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic Seaboard ports to Pacific Coast ports; competition of various water carriers operating from foreign countries to Pacific Coast ports and competition of the products of said foreign countries with the products received at the said eastern shipping points; competition of the products of Eastern and Atlantic Coast points with the products moving to the Pacific Coast from points in the interior; competition of Canadian rail carriers not subject to the Interstate Commerce Act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

Copies of the tariffs and circular in connection with which relief from the fourth section is desired, and to which ref erence is made in the foregoing, are attached hereto and made a part hereof.

Yours very truly,

(Signed) J. F. TUCKER,
Agent.

Subscribed and sworn to before me this day of December, 1910.

Notary Public.

My commission expires.....

(Signed) C. W. BULLEN,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

(Signed) R. H. COUNTISS,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

EXHIBIT "B."

I. C. C. NO. 342.

APPLICATION No. 13.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH PROPORTIONAL RATES APPLYING TO VANCOUVER, B. C., UNDER THE FOLLOWING TARIFFS:

RAILROAD TARIFF	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
No. S. R. 1001 and Supplement 7 thereto	No. 914 and Supplement 7 thereto	R. H. Countiss
No. S. R. 1003 and Supplement 4 thereto	No. 923 and Supplement 4 thereto	R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agent and Attorney or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petition the Interstate Commerce Commission for authority to con-

tinue the rates shown in the above-named tariffs from eastern shipping points designated therein to Vancouver, B. C., lower than rates concurrently in effect from and to intermediate points.

The tariffs referred to name proportional rates from shipping points designated on page 1 of each of said tariffs, to Vancouver, B. C., applying to Yokohama, Kobe, Nagasaki, Moji, Japan; Shanghai, Hongkong, China; Manila, P. I. (or beyond); and to Sydney, Newcastle, Brisbane (Pinkenba Wharf), Australia; Suva, Fiji Islands; Auckland, New Zealand (or beyond).

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than the rates applying at the intermediate points; these lower proportional rates being necessary in connection with steamer lines operating to Asiatic points, Philippine Islands, Australia, New Zealand, etc., through Vancouver, B. C., by reason of:

The competition of the water carriers operating from and through the Atlantic ports of the United States and Canada, via the Suez Canal, to Asiatic points, Philippine Islands, Australia, New Zealand, etc.; also competition of American products with the products of foreign countries moving via the Suez Canal to Asiatic points, Philippine Islands, Australia, New Zealand, etc.

Copies of the tariffs in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours very truly,

(Signed) R. H. Countiss,

Agent.

Subscribed and sworn to before me this day of December, 1910.

Notary Public.

My commission expires.....

EXHIBIT "C."

I. C. C. NO. 343.

APPLICATION No. 12.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH PROPORTIONAL RATE ON EARTHENWARE AND CROCKERY (CARLOADS), UNDER THE FOLLOWING TARIFF:

RAILROAD TARIFF	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
No. 4-H	No. 14 No. 226 No. 928	C. W. Bullen J. F. Tucker R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agents and Attorneys or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petition the Interstate Commerce Commission for authority to continue the proportional rate of 85 cents per 100 lbs., from Portland, Me., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Newport News, Va., Norfolk, Va., to North Pacific Coast Terminals (designated on page 16 of tariff), and to British Columbia Pacific Coast Terminals (designated on page 23 of tariff), shown in item 9, page 130 of the above named tariff, applying on carload shipments of Earthenware and Crockery originating in Europe, lower than rates concurrently in effect from intermediate points and to intermediate points in Canada and in the states of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making a lower rate at the more distant points than at the intermediate points, such lower proportional rate being necessary by reason of:

The competition of the direct all-water routes, and the water- and rail routes via the Isthmus, from European ports to Puget Sound and British Columbia ports.

A copy of the tariff in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, is attached hereto and made a part hereof.

Yours very truly,

(Signed) J. F. TUCKER,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

(Signed) C. W. BULLEN,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

(Signed) R. H. COUNTISS,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

EXHIBIT "D."

I. C. C. NO. 344.

APPLICATION No. 11.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH PROPORTIONAL RATES FROM NEW ORLEANS, LA., GALVESTON, TEXAS CITY, TEX., TO CALIFORNIA TERMINALS, ON TRAFFIC ORIGINATING IN FOREIGN COUNTRIES, UNDER THE FOLLOWING TARIFF:

RAILROAD TARIFF	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
No. S. R. 1002 and Supplement 3 thereto	No. 917 and Supplement 3 thereto	R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agent and Attorney or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariff from (ship-side) New Orleans, La., Galveston, Texas City, Tex., to California Terminals designated therein, lower than rates concurrently in effect from and to intermediate points.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; these lower proportional rates being necessary to equalize the through rates on shipments from European points moving via Gulf ports, as against shipments moving via Atlantic seaboard ports; the ocean carriers' charges be-

ing higher from European ports to Gulf ports than from European ports to Atlantic seaboard ports.

A copy of the tariff in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, is attached hereto and made a part hereof.

Yours very truly,

(Signed) R. H. COUNTISS,
Agent.

Subscribed and sworn to before me this day of December, 1910.

Notary Public.

My commission expires.....

EXHIBIT "E."

I. C. C. NO. 349.

APPLICATION No. 5.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH THE FOLLOWING TARIFFS:

RAILROAD REFERENCE	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
Tariff No. 2-H and Supplement 1 thereto	No. 930 and Supplement 1 thereto	R. H. Countiss
Tariff No. 3-I and Supplement 2 thereto	No. 926 and Supplement 2 thereto	R. H. Countiss
Tariff No. 7-C and Supplements 5 and 7 thereto.....	No. 921 and Supplements 5 and 7 thereto.....	R. H. Countiss
Tariff No. 9-C and Supplement 5 thereto	No. 922 and Supplement 5 thereto	R. H. Countiss
Tariff No. 10-C.....	No. 931.....	R. H. Countiss
Tariff No.S.R.998 and Supplement 6 thereto	No. 909 and Supplement 6 thereto	R. H. Countiss
Tariff No. S. R. 1004 and Supplem. 4 thereto	No. 924 and Supplement 4 thereto	R. H. Countiss
CircularNo. 16-F and Supplement 4 thereto	No. 915 and Supplement 4 thereto	R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agent and Attorney or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from Pacific Coast shipping points designated to the eastern destinations designated, lower than rates concurrently in effect from and to intermediate points.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of:

Competition of various water carriers and of carriers partly by water and partly by rail operating from Pacific Coast ports to Atlantic seaboard ports; competition of various water carriers operating to foreign countries from Pacific Coast ports and competition of the products of foreign countries with the products of the Pacific Coast; competition of the products of Pacific Coast territory with the products of other sections of the country; competition of Canadian rail carriers not subject to the Interstate Commerce Act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

Copies of the tariffs and circular in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours very truly,

(Signed) R. H. Countiss,

Agent.

Subscribed and sworn to before me this day of December, 1910.

Notary Public.

My commission expires.....

EXHIBIT "F."

I. C. C. NO. 350.

APPLICATION No. 4.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH THE FOLLOWING TARIFFS:

RAILROAD TARIFF	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
No. 5-F and Supplement 8 thereto...	No. 918 and Supplement 8 thereto....	R. H. Countiss
No. 6-D and Supplement 6 thereto...	No. 916 and Supplement 6 thereto....	R. H. Countiss
No. 8-D and Supplement 1 thereto...	No. 932 and Supplement 1 thereto....	R. H. Countiss
No. 10-C and Supplement 1 thereto...	No. 931 and Supplement 1 thereto....	R. H. Countiss
No. 11-C and Supplement 2 thereto...	No. 925 and Supplement 2 thereto....	R. H. Countiss

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as Agent and Attorney or under authority of concurrences on file with the Commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from eastern shipping points designated to the Pacific Coast terminal points and other points designated, lower than rates concurrently in effect from intermediate points, and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of:

Competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic Seaboard ports to Pacific Coast ports; competition of various water carriers operating from foreign countries to Pacific Coast ports and competition of the products of said foreign countries with the products received at the said eastern shipping points; competition of the products of Eastern and Atlantic Coast points with the products moving to the Pacific Coast from points in the interior; competition of Canadian rail carriers not subject to the Interstate Commerce Act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

Copies of the tariffs in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, are attached and made a part hereof.

Yours very truly,

(Signed) R. H. Countiss,
Agent.

Subscribed and sworn to before me this Seventh day of December, 1910.

Notary Public.

My commission expires.....

EXHIBIT "G."

I. C. C. NO. 352.

APPLICATION No. 2.

December 7, 1910.

To the Interstate Commerce Commission,
Washington, D. C.

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF AMENDED COMMERCE ACT IN CONNECTION WITH THE FOLLOWING TARIFFS:

RAILROAD REFERENCE	INTERSTATE COMMERCE COMMISSION TARIFF	OF AGENT
Tariff No. 1-L and Supplements 1, 2 and 3 thereto.....	No. 13 and Supplements 1, 2 and 3 thereto.. No. 225 and Supplements 1, 2 and 3 thereto.. No. 929 and Supplements 1, 2 and 3 thereto..	C. W. Bullen J. F. Tucker R. H. Countiss
Tariff No. 4-H and Supplements 1, 2, 3 and 4 thereto.....	No. 14 and Supplements 1, 2, 3 and 4 thereto No. 226 and Supplements 1, 2, 3 and 4 thereto No. 928 and Supplements 1, 2, 3 and 4 thereto	C. W. Bullen J. F. Tucker R. H. Countiss
Circular No. 16-F and Supplement 4 thereto.....	No. 9 and Supplement 4 thereto..... No. 168 and Supplement 4 thereto..... No. 915 and Supplement 4 thereto.....	C. W. Bullen J. F. Tucker R. H. Countiss

In the name and on behalf of each of the carriers that are parties to the above named tariffs, the undersigned, acting as Agents and Attorneys or under authority of concurrences on file with the Commission from each of said carriers, respectfully petition the Interstate Commerce Commission for authority to publish a clause in said tariffs providing as follows:

The sum of the local rates (class or commodity) to and from any intermediate point, when less than the through rates (class or commodity) shown in this tariff, will apply as the through rate,

or

The charges collected for the transportation of a shipment from and to points named in this tariff or in tariff or list of

points referred to in this tariff and thereby made a part of this tariff, must not exceed what the charges would be by applying thereon the sum of the lawful intermediate rates in force via the route over which the shipment moves.

If the Commission cannot see its way clear to grant us authority to publish one of the clauses above suggested, we would ask that we be given authority to waive the clause of the 4th Section of the Amended Act which provides that a through rate shall not exceed the aggregate of the intermediate rates subject to the provisions of the Act, and thereby permit us to continue to apply the published through rates as shown in the above-named tariffs.

We believe the difficulty of publishing a through tariff to and from territorial groups which would not in some instances contain rates which would exceed the sum of the local rates is apparent; for instance, some published through rate from a shipping point immediately east of the Chicago group or territory might, through oversight or otherwise, exceed the sum of the local rates from such shipping point to the nearest point taking the Chicago rate basis, plus the Chicago rate thence to destination.

The difficulty of publishing through rates which would in no case be in excess of the combined local rates is seen in some of the recent Orders of the Commission in the intermountain cases, wherein the maximum through rates prescribed by the Commission exceed the sum of the local rates.

Copies of the tariffs and circular in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours very truly,

(Signed) J. F. Tucker,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

(Signed) C. W. BULLEN,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

(Signed) R. H. COUNTISS,
Agent.

Subscribed and sworn to before
me this day of December, 1910.
Notary Public.

My commission expires.....

OPINION No. 1623.

BEFORE THE

INTERSTATE COMMERCE COMMISSION.

APPLICATIONS FOR RELIEF UNDER THE FOURTH SECTION: Nos. 205, 342, 343, 344, 349, 350, and 352.

No. 1665.

RAILROAD COMMISSION OF NEVADA

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 1796.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY ET AL.

Decided June 22, 1911.

SUPPLEMENTAL REPORT OF THE COMMISSION.

329 APPLICATIONS FOR RELIEF UNDER THE FOURTH SECTION: NOS. 205, 342, 343, 344, 349, 350, and 352.

No. 1665.

RAILROAD COMMISSION OF NEVADA

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 1796.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY ET AL.

Submitted March 22, 1911. Decided June 22, 1911.

---

1. Previous order herein as to class rates from points in eastern defined territory to points in Nevada allowed to stand; but as to commodity rates an adjustment of the relation between such rates to the Pacific coast and the rates to interior Nevada points should be made under construction of present fourth section.

2. Comparison of provisions of old fourth section and new fourth section made, and the varying views considered and discussed; and the amended fourth section held to be a provision of law within the proper scope of congressional jurisdiction.

3. The proviso authorizing this Commission to permit exceptions to the general prohibition of the fourth section is not a grant of arbitrary or absolute power, but its exercise must be limited and conditioned upon the presence in special cases of conditions and circumstances which would

make such exceptions legal and proper and in no wise antagonistic to other provisions of the act.

4. It must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.

5. The intendment of the amended law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application from which this Commission may deviate only in special cases and then to meet transportation circumstances which are beyond the carriers' control.

6. Survey of the facts involved in the transcontinental situation made; history of the long-fought struggle between the transcontinental railroads and the ocean carriers given; leading up to the present basis of rail rates from the Atlantic seaports to the Pacific coast; and *Held*, That in the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition.

330 7. Upon the facts disclosed by the record; *Held*, That the carriers herein involved have not shown that undue discrimination was not effected by their rate adjustment between points in Nevada and points in California, nor have they established that the rates to the coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensatory. Transcontinental carriers ordered to readjust their present rates from eastern defined territories to intermediate points as compared with such rates from said territories to Pacific coast points.

Cleveland H. Baker, J. S. Shaughnessy, and *H. F. Bartine* for Railroad Commission of Nevada.

F. A. Jones for Maricopa County Commercial Club and Arizona Commercial Association.

George J. Stoneman and *E. S. De Pass* for Arizona Railway Commission.

Edward Chambers, Gardiner Lathrop and *G. T. Nicholson* for Atchison, Topeka & Santa Fe Railway Company.

Hale Holden and *E. C. Lindley* for Chicago, Burlington & Quincy Railroad Company.

L. H. Loomis, P. L. Williams, C. W. Durbrow, W. W. Cotton, G. W. Luce, H. M. Garwood, J. C. Stubbs, and *H. A. Scandrett* for Union Pacific Railroad Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Southern Pacific Company.

J. P. Blair for Morgan's Louisiana & Texas Railroad & Steamship Company.

James C. Jeffrey for Missouri Pacific Railway Company and Denver & Rio Grande Railroad Company.

H. C. Barlow for Chicago Association of Commerce.

Louis D. Brandeis, D. O. Ives, and *S. C. Mead* for Merchants' Association of New York, Boston Chamber of Commerce, and 16 other eastern commercial organizations.

Edward M. Cousin for The Dalles, Centralia & Chehalis, and Willamette Valley Railway Exchange.

R. H. Countiss for Transcontinental Freight Bureau.

P. W. Coyle for Business Men's League of St. Louis.

N. B. Kelly for Philadelphia Chamber of Commerce.

E. J. McVann for Omaha Commercial Club.

J. N. Teal for Portland Chamber of Commerce, Seattle Chamber of Commerce, and Tacoma Traffic Association.

James J. Wait for Chicago Association of Commerce.

E. E. Williamson for Shippers' Association of Cincinnati.
331 *Miner P. Goodrich* for San Pedro Traffic Bureau.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner:*

It is now nearly a year since the Commission issued its order establishing class rates from eastern points to stations in Nevada and Arizona. These decisions are reported in 19 I. C. C. Rep., 238 and 257. At that time it was announced that the question of commodity rates was reserved for later consideration. The contention of Nevada had been that under all provisions of the act to regulate commerce the rates extended by the railroads to the Pacific coast terminal cities, such as Sacramento and San Francisco, should be granted to Nevada. By reference to the previous report it will be seen how insistent was the claim that to charge any higher rate to Nevada points than was given to Sacramento was a violation of the fourth section of the act prohibiting lower rates at the more distant point; that there was no such water competition at these coast terminals as justified the preferential rates given to them; that the rates to the coast were in fact reasonable and not abnormally low; that this was recognized by the carriers in making their divisions east of Ogden in that they accepted upon business destined to points in Nevada the same divisions upon transcontinental traffic as when destined to the coast terminals; and that whatever shadow of water competition remained which was potent in reducing the rate below a fully normal standard of reasonableness was more than offset by the shorter haul to the interior points, making the coast rate a reasonable one for the shorter haul to this intermountain country.

After considering very fully these propositions the Commission came to the determination that rates on traffic between the Atlantic and Pacific coasts were affected by the presence of the ocean, and while the carriers made a blanket class rate to coast terminals upon a $3 scale (the blanket covering the whole of the continent from Denver, Colo., to Portland, Me.), a reasonable first class rate to Reno, Nev., would be $2.90 from Chicago and $3.50 from New York. The railroads have construed this finding to mean that a maximum reasonable rate from ocean to ocean by rail would be $3.70, and have notified the Commission that upon such a basis class rates would be graded down in accordance with the requirements of the fourth section.

Before the Commission came to deal with the matter of commodity rates Congress amended the fourth section of the act with this very intermountain situation distinctly in mind, as the Congressional debates disclose. Accordingly, after further hearings had been had with reference to commodity rates, the Commission went into an extensive inquiry as to the justification which the carriers could give for charging higher rates at intermediate than at terminal points.

332 At the time the last report in this case was issued the Commission had before it the alternative of fixing a low scale of class rates and making no exceptions thereto by the establishment of commodity rates, or the allowance of a high scale of class rates and taking from the classification a number of articles upon which special commodity rates would be fixed as exceptions to the classification; the latter, as is generally known, being the manner by which the carriers themselves throughout the years have adapted their rates to the movement of traffic; the foundation of a railroad tariff being its classification upon which is imposed a scale of graded rates

with reference to such classification. Commodity rates are in essence exceptions to the classification based upon a belief in the economic expediency of such course. For reasons that it is not necessary here to present—notably the fact that the carriers had theretofore extended a large number of commodity rates to certain intermountain points, the Commission saw fit to follow the latter of these two methods, and, allowing a high scale of class rates, purposed proceeding to the establishment of a number of commodity rates adapted to the commercial needs of the Nevada shippers. Reno, it will be recalled, had but two or three score of such commodity rates, while Salt Lake City on the east had something more than 200, and Spokane on the north some 600, while the terminal cities had commodity rates upon over 3,000 different articles. Nevada's demand was that she should be placed on a parity with her western neighbors, that all of the commodity rates given to them should be extended to her. The Commission was proceeding to make such selection of commodities as seemed proper when the law was amended as already noted, so that there arose the third alternative of giving application to the fourth section so far as Nevada's traffic was concerned.

We have decided to allow our previous order as to class rates to stand, and, instead of fixing commodity rates, proceed in accordance with the appeal of the original complaint, but more particularly in compliance with our understanding of the meaning of the new fourth section to seek an adjustment of the relation between the rates to the coast cities and the rates to the interior points.

For convenience the new section four and the old section are here placed in parallel columns, the words omitted from the old section being in italics, while those inserted in the new section are likewise placed in italics.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, *under substantially similar circumstances and conditions,* 333 for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge *and* receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission *appointed under the provisions of this Act,* such common carrier may, in special cases, after investigation *by the Commission,* be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section *of this Act.*

SEC. 4. (*As amended June 18, 1910.*) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line *or route* in the same direction, the shorter being included within the longer distance, *or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act;* but this shall not be construed as authorizing any common carrier within the terms of this Act to charge *or* receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the *Interstate Commerce* Commission such common carrier may in special cases, after investigation, be authorized *by the Commission* to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided, further, That no rates*

or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

In accordance with the requirements of this provision the transcontinental carriers parties herein filed applications within the prescribed period asking for relief from the drastic prohibition of the fore part of this section and offering justification for the existence of higher rates at stations in Nevada than at Sacramento and San Francisco, the more distant points. These applications came up for consideration with the new hearing on this case, and not only was extended argu-

ment had thereon, but new evidence was taken as to those peculiar conditions obtaining on the Pacific coast which might justify departure from the law's command.

334 THE NEW FOURTH SECTION.

Before proceeding to the consideration of the facts it may be well to ask what this new law means. It would avail nothing useful to review the many constructions which have been urged upon the Commission. They vary in plausibility and lead to different ends. One of the most interesting is that presented by a group of shippers who urge that by the elimination of the words "under substantially similar circumstances and conditions" Congress has deprived the Commission of any standard by which it can determine whether a carrier shall be granted relief; for without these words as a guide, and no other standard being substituted, the provision becomes a clear delegation of legislative power which may be exercised arbitrarily, and therefore the proviso under which exceptions may be allowed becomes void and the section stands as if the proviso did not exist—an absolute long and short haul provision. This, it is said, was done with purpose, indeed with cunning. The section was the result of a compromise between the two elements in the national legislature which had been compromising as to this section ever since the act to regulate commerce was first proposed. There have been those who favored an absolute prohibition and those who favored a prohibition with exceptions. When these two forces met, after long and fruitless discussion, the present compromise section was suggested. This, it is said, was acceptable to the radicals —the absolutists, so to speak—for they believed that without these words, "under substantially similar circumstances and conditions," in the act the proviso would be unconstitutional

and the provision would become clearly mandatory and a perfect prohibition against the charging more for the shorter than the longer distance. Quite naturally there is a still further view presented, that if the proviso is unconstitutional and falls for this reason the entire section is destroyed.

From these extreme views there are modifications of varying degree, with all or any of which it seems now unnecessary to deal. This Commission is performing a function for Congress which the legislature itself cannot directly exercise because of the multiplicity of its duties. We are not inclined to any view which renders the act of Congress unconstitutional, much less do we look with kindliness upon a construction which makes the act of Congress absurd.

PURPOSE OF CONGRESS.

The simple truth is that Congress determined upon strengthening the long-and-short-haul section. Members of Congress representing those portions of our country against which there was the greatest discrimination presented amendments to the fourth section that would make it rigid, inflexible, absolute. Against these amendments the carriers themselves made protest that was supported with reason. The Commission itself, although the opportunity had frequently been presented to it, has never indorsed a rigid long and short haul section. Indeed, the present provision is drawn along lines which received the tentative approval of the Commission. Because those who advocated the absolute clause realized that there might be certain circumstances under which such a provision would do grave injustice to the carriers, they yielded to those who were in opposition to such a provision. At the same time, however, they insisted that the long and short haul section should be made more strong, more certain, and more effective.

It was their complaint that by reason of the construction that had been given to the language "under substantially similar circumstances and conditions" the courts had devitalized this provision of the law and had rendered it of no value either to the south or to the far west, where its provisions were most needed. The result of this fusion of ideas was the present section, which was supposed to represent two things: The elimination of the words which had by judicial interpretation played, as it was believed, such havoc with the law; and, on the other hand, the stiffening of the fore part of the section, which was its vital portion. In short, Congress intended that the law should say that, as a general rule, there should be no lesser charge to the more distant point, but it was not willing to say that there should not be some exceptions to this rule. The railroads, however, were not to make these exceptions themselves. Such exceptions were to be made only upon petition to the Commission upon public justification being shown.

Here, however, we come to the criticism that a standard is not set by which this Commission can say whether an exception shall be made or not; in other words, that the fourth section, instead of being one which lodges the power in the Commission subject to a fixed criterion, vests such power to make exceptions arbitrarily in the Commission, subject only to its own caprice. The latter is a construction of this law abhorrent to the theory of our institutions, and certainly not to be presumed as the one which Congress intended; and we venture the thought that a study of the history of this section since 1887 and the debates thereon in Congress, more especially the consideration that was given to this provision during the session of 1910, lead to a construction that is more simple, and entirely consonant with the power of Congress and with the theory of the entire act.

Clearly section four is at least a continuance of the stringent prohibitions against discrimination which are found in the preceding sections. In section two the carriers are told that they must not prefer one individual over another in the matter of rates. This is an "equality clause," as the English courts style it; and it was taken from their law. All men for the same service are to have the same rate. And then, moving on to the next section, we find it made unlawful to give a preference, not only to a person but to a locality or to a particular description of traffic. Naturally all traffic cannot be treated alike, nor all communities given the same rates, so that the prohibition against these forms of discrimination is limited by the expression that such preferences or advantages which are undue or are unreasonable are not to be permitted. Because these words "undue" and "unreasonable" are used in the statute, it does not follow that the Congress attempted to lodge arbitrary power in the hands of the Commission in deciding when a preference was undue, nor can it be said that the presence of these qualifying words in any way minimizes the very direct declaration of Congress that there should be no preference as between localities. Congress itself could have undertaken to make rates, to establish relationships between communities and between commodities. Because of inconvenience this method was not followed, but it laid down certain rules which its administrative representatives must follow, and we may take into consideration those various circumstances which properly would have acted upon the mind of the legislature in determining what was unreasonable, undue, or unjust. We cannot act arbitrarily, for we must have reason. The exercise of judgment necessarily implies some play for the individual mind; for all men will not come to the same conclusion from the same set of facts; they do not see

with the same perspective nor regard things from the same standpoint.

Now, the Congress has pursued, it seems to us, precisely the same theory in regard to the fourth section that it pursued in regard to the first, second, and the third sections. The fourth is but a definite continuation of the policy it was announcing throughout the whole act. Discriminations must stop, viz, undue discriminations. Preferences and advantages must be put an end to—those, to be sure, that are undue and unreasonable. The rule is absolute; but there is a modification to this rule which allows the exercise of a wise and a judicial discretion. So with reference to the long and short haul section. It is in its nature a discrimination for a community that is nearer New York to be charged a higher rate upon freight from New York than a community that is at a greater distance from New York, the same line being used for the traffic. Upon its face nothing could appear more unjust than the relationship that exists between the intermountain cities such as Reno and the coast cities such as San Francisco.

337 And Congress 24 years ago, having in mind such situations throughout the country (for this the debates and the Cullom report evidence), sought to condemn such discrimination, and for the public welfare to put an end to a situation that was so provocative of complaint and created such friction between the shipping public and the transportation agencies. The state has an interest of the highest order in securing harmony of relationship between the railroads, which are the people's highways, and the shipping public. It has a political interest in seeing that communities are not embittered against each other; that the people of Nevada, for instance, do not feel that they are oppressed and placed at a disadvantage by rea-

son of favors extended to their neighbors on the west of them by the railroads. No one can doubt that it is within the proper function of the state to make rules by which peace will be established between cities as between individuals, and this Commission was erected so that there might be a tribunal to which appeal could be made by that community which felt itself wronged by reason of an advantage given to a rival community. For 20 years this Commission has labored to secure laws and their enforcement which will lead to the destruction of those preferences as between individuals, which were a cause of a bitterness between business rivals, and within the last few years we have indulged the confidence that the practices under which such preferences thrived had fallen into neglect and some degree of disgrace. The more difficult labor of the Commission latterly has been to adjust difficulties as between communities, and we have as one guide in this respect the fourth section of the act. Congress felt the old section to be inadequate; it substituted another; it cast the burden upon the carrier of establishing its right to an exception from the general rule which it lays down and to which it expects adherence—the shorter haul shall not be charged the higher rate. So, as we feel our way back through the vast mass of legislative and judicial construction touching this particular section of the act (which in most part serves more to confuse than to clarify the problems confronting us), we come at the end of the long and devious journey to section four as originally reported by the Cullom committee in 1886. The Senate select committee, of which the now venerable Senator Cullom was chairman, found itself in precisely the same state of mind relating to this problem that we know by Congressional history to have been that of the last Congress which dealt with this problem, for in the Cullom report it is said that—

> No question which can enter the problem of railroad regulation has given the committee more perplexity than that relating to the utility and expediency of legislation prohibiting a carrier from charging more for a shorter than a longer haul under any circumstances; not that we have any doubt as to the injustice of such a charge under most circumstances, but because it seems inexpedient to enforce such a regulation under all circumstances.

338 Being, therefore, of the mind that there should be such a general rule, subject, however, to proper exceptions, the Cullom report suggested this section four:

> Section 4. That it shall be unlawful for any common carrier subject to the provisions of this act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or property for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure, if such greater charge for the shorter distance constitute an unjust discrimination; but such greater charge for a shorter distance shall be presumptive evidence of unjust discrimination, which may, however, be rebutted by the common carrier.
>
> Upon application to the Commission appointed under the provisions of this act, such common carriers may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may, from time to time, make general rules covering exceptions to any such common carrier in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier from the operation of this section of this act; and when such exceptions shall have been made and published, they shall have like force and effect as though the same had been specified in this section.

The language of this first paragraph reveals the philosophy upon which this section was originally based. The Congress is continuing its declaration of antagonism to unjust discrimination. This provision is not a distinct and separable part of

the act; it is but one declaration or pronouncement as to what Congress regards as inimical to public policy. Instead of allowing this kind of discrimination to remain in obscurity as others are, the law separates and distinguishes it by naming it. To charge more for the shorter haul over the same line shall be presumptive evidence of unjust discrimination, and the burden is cast upon the carrier justifying a condition which is *prima facie* unlawful and unjust.

If, now, we turn again to the new section four and read the first paragraph again, we see that it varies in no degree whatever in spirit and intent from this section reported to the Senate nearly 25 years ago. We have reverted to the idea of an earlier day, broadened, perhaps, slightly. The test which the Commission must now apply to determine whether the carrier may be given the advantage of an exception to the general rule of section four is the same test that it may apply with respect to any other discrimination or inequality. There is incorporated in section four every standard set up by Congress as a guide to this Commission which is to be found in any section of the act. And the leeway or discretion which may properly be exercised by this Commission under any other section may properly be exercised under this section. For instance, it is for us, acting within the limitations of the law, to determine what is a reasonable practice for a common carrier to pursue. This calls for the widest exercise of discretion. And if our judgment is arbitrary, or we transcend those limitations properly binding such a tribunal, our act may be set aside. But in every decision of this Commission, under any section whatsoever, there enters the element of personal judgment, just as in every verdict of a jury the result is colored necessarily by the mental attitude and experience of the juror.

The Commission has not been left without a proper test to apply: The test of justness, of reasonableness, of discrimination, of preference and advantage; the test of fair play as between communities. With this construction of the statute, which is historically supported, as well as by those more or less variable measures known as the canons of statutory construction, the statute becomes both practicable and constitutional; we are neither forced to disregard it as a whole nor to eliminate any of its provisions; it does not become an absolute long-and-short-haul section, because the proviso permitting of exceptions remains; the provisional clause does not relegate the entire section to the limbo of unconstitutionality, because we find that it may be administered in thorough harmony with the whole act, part of which it is; and the tests and standards to be applied are not matters of fancy, but are the express and positive words in the law itself. In short, Congress has undertaken to specify distinctly one practice which it wishes especially to destroy and charges this Commission not to permit it to obtain unless such discrimination, such preference, such practice may be shown not to be a discrimination that is unjust, a preference that is undue, or a practice that is unreasonable, because of peculiar facts and conditions.

All the burdens of establishing these justifying conditions are cast upon the carriers; the doubts are to be resolved against them; the wish of Congress is expressed and clear. The carrier may no longer float along as under the old section, needing no other justification for its policy than its own conscience, but must set forth clearly what it is doing and convince those constituted to judge that this exceptional policy in a special case is in harmony with the intent of Congress that

communities shall be treated fairly, one with relation to the other. The more distant community shall not be preferred over the nearer one because it may please the carrier to develop the one and retard the other. As it costs more to carry traffic a longer distance, so the rate to the farther point shall not be made less than the rate to the nearer point merely because of railroad policy. So far the section establishes a shipper's principle, and is in sympathy with and expressive of the most primary principle of equality. The proviso, however, is primarily for the carrier's benefit; it recognizes that the railroad may engage in competition for traffic to more distant points at lower rates than may be charged to intermediate points without doing injury or injustice to such intermediate points. But to this policy a limit may be, indeed must be put.

There is in our minds no doubt but that the Congress can put into effect a long-and-short-haul clause, such as is here considered. Similar provisions obtain in the laws of Arkansas, Indiana, Kentucky, Iowa, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, South Carolina, South Dakota, Texas, Vermont, Virginia, and West Virginia. The provision of our law is almost identical with that of Kentucky, which was upheld by the Supreme Court in the case of *L. & N. R. R. Co.* v. *Kentucky*, 183 U. S., 503, in which the court said (page 515):

> "But if it be competent for the state, as this argument supposes, to wholly forbid, in every case, and by every carrier, the charging of more for a short than a long haul, it is not easy to see why the state may not permit such charges through the action of a tribunal authorized to investigate the subject and to afford relief in cases deemed proper. Such a provision is *ex gratia*, in the direction of exonerating the carrier from what the argument concedes to be a lawful limitation. Such an exercise of discretion by the railroad commission would be no more

> arbitrary than if the Constitution had authorized the legislature to allow in special cases a greater charge for the shorter than for the longer distance, and to prescribe the extent of such excess. We are not prepared to accept the view that the railroad commission, in acting under section 218, is merely an administrative body, and as such subject to judicial review. It is rather a constitutional tribunal, empowered, *upon the application of the carrier*, to investigate the special circumstances and conditions which are claimed to justify the relief of the carrier from the operation of this section. It is not compulsory upon the carrier to make such application for relief to the commission. If he does not choose to do so, he will continue to operate his railroad under and subject to the constitutional prohibition. If he elects to resort to the commission, he can no more complain that its judgment is final, when it is against his contention, than the community affected can complain when its judgment is in his favor.

It has been said that while a sovereign state by incorporating such a provision in its constitution could make it the law it was beyond the power of Congress to enact a statute of this character in that Congress itself legislates under constitutional limitations. It is not profitable to argue this attenuated proposition. The fundamental right of Congress to regulate the rates and the practices of the carriers engaged in interstate commerce takes from these carriers the power to set up a policy of their own in contravention of the determination of the national legislature. Until a carrier could demonstrate that its property was being confiscated by the enactment of a hard and fast long-and-short-haul clause it could not be heard to complain against the enactment of such a law. But this is no such provision. This section as it stands now reveals the mind of the Congress that in fairness to the carriers they may be allowed in exceptional cases to meet exceptional conditions at distant points, but these exceptions shall be controlled, not by the whim of the carrier or by its own desire to give pref-

erence or to increase earnings. The public will permit the
341 discrimination against the nearer points if it is reasonably established that the carrier will suffer if such discrimination is not permitted, and, too, that the public will not suffer by such procedure. The proviso of the act is an extension of governmental leniency. It is made in the carriers' interest, and if it were removed from the act there is doubt if the carriers themselves could be heard to complain.

In dealing with this case we shall regard these propositions, therefore, as established:

(1) That the fourth section as amended in 1910 is as a whole constitutional, a provision of law within the proper scope of Congressional jurisdiction.

(2) That the proviso authorizing this Commission to permit exceptions to the general prohibition of the section is not a grant of arbitrary or absolute power, but its exercise must be limited and conditioned upon the presence in special cases of conditions and circumstances which would make such exceptions legal and proper and in no wise antagonistic to other provisions of the act.

(3) That it must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.

(4) That the intendment of the law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application from which this Commission may deviate only in special cases and then to meet transportation circumstances which are beyond the carriers' control; that is to say, a carrier shall not prefer the more distant point by giving it the lower rate because of any policy of its own initia-

tion, but if at the more distant point it finds a condition to which it must conform under the imperious law of competition if it would participate in traffic to that point it may discriminate against the intermediate point without violating the law, provided it establishes such necessity before the Commission. But to this discrimination there may be a limit set by the Commission. The discrimination may not be such as to offend the reasonable standards of the law, for it is said that the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

In what, then, does the new section four differ from its predecessor? It is not, perhaps, necessary to answer this question in all possible detail. Two things are obvious: Instead of the burden being upon the complaining shipper to show the injustice done and to parallel step by step the circumstances and conditions at the two contrasted points, the burden now rests clearly upon the shoulders of the carrier to make good its own title to an order of exception; and, further, this important modification, that by the elimination of the words
342 "under substantially similar circumstances and conditions" Congress has taken from the law an embarrassing modification of the prohibition against the higher charge to the intermediate point. Congress cut these words from the act for the same reason that it cast the burden upon the carriers to prove their need for the exception; it wished to reduce the discrimination in rates between points to a minimum and to make the pathway to the exception difficult, and not easy.

REVIEW OF FACTS.

We turn now from consideration of the law to a survey of the facts involved in the transcontinental rate situation. It

is more than twenty years since this Commission was first petitioned to extend to intermediate points the west-bound rates that were given to the Pacific coast terminals. The agitation for a rigid application of the rule that a more distant point should not enjoy a lower rate has persisted throughout the years, manifesting itself before the Commission, the courts, and each succeeding session of Congress at which consideration was given to the amendment of the act to regulate commerce. The intermountain country, in which Reno is a typical point, has led in this agitation. A shipper finds it difficult to reconcile himself to paying $500 a car for the transportation of a carload of merchandise to his own city when that same carload will be carried from the same point of origin through his city to a point 500 miles beyond for $300. Such a condition appeals to all as *prima facie* unjust. The railroad, however, answers that it grants the $300 rate, not because it desires to, but under compulsion of water competition, and that the $500 rate is reasonable for the service that is given to the intermediate point.

The carriers do not deny that upon them rests the burden of establishing the reasonableness of the condition that obtains. Conscious of its apparent unfairness, they insist that it does no injury to the points upon which are imposed the higher rates, and that it would be contrary to the interest of the carriers and to the broadest public policy were the present system changed. We come thus to inquire: What is the transcontinental scheme of making rates, and what are the causes which have produced it? Has there been real competition between rail and water carriers, and what has been its effect? To what extent, if at all, does this present rate scheme rest upon the active rivalry of ocean and rail lines?

If one reverts to the original report in this case and studies the map therein printed, it will be seen that what is known as transcontinental territory extends from Colorado on the
343 west to Maine on the east, and from this blanket the same rates are given practically upon all classes and commodities to what are known as Pacific coast terminal points. Of these latter the principal ones are Seattle, Tacoma, Portland, San Francisco, Los Angeles, and San Diego. In Oregon but two places enjoy these rates—Astoria, at the mouth of the Columbia River, and Portland, at the junction of the Willamette and the Columbia rivers—to both of which points steamships and sailing vessels carrying Atlantic seaboard traffic have easy and constant access. In southern California, San Diego is upon a harbor and is a port of call for steamships engaged in interoceanic traffic. Los Angeles, however, is not upon the sea; at least has not been until recently. The city limits of Los Angeles have now been extended so as to include a strip of land extending from that city to the port of San Pedro, which has become the port of Los Angeles, and the citizens have raised a fund for the improvement of the harbor and its water front and the building of a municipal line of steam railroad for the 16 miles between the heart of the city and the water's edge. This anomalous condition of things, however, exists—that until a recent order of the Commission the little city of San Pedro, through which traffic by water moved to and from Los Angeles, was denied terminal rates, although the city of Los Angeles, which was inland, enjoyed such rates. Many cities and towns an equal distance from the seacoast but equally accessible thereto do not enjoy terminal rates, and some immediately upon the coast, such as Ventura and Santa Barbara, pay higher rates than does Los Angeles. How, then,

is this preference of Los Angeles justified? The answer of the railroads is that the benefits of sea competition were extended to Los Angeles by an arrangement between the Santa Fe Railroad and the American-Hawaiian Steamship line, the Santa Fe publishing an extraordinarily low schedule of rates upon traffic transshipped at San Diego and destined to Los Angeles. In 1900 the American-Hawaiian Company put on a line of steamships by way of the Straits of Magellan, and for the last five years has had a considerable fleet engaged in this through business by way of the Tehuantepec Railroad, which is controlled by the Mexican Government. This steamship line stops at San Diego, but does not stop at the port of San Pedro. The Santa Fe Railroad extends to it and other water carriers a schedule of class rates from San Diego to Los Angeles approximately the same as that obtaining over the San Pedro line from San Pedro to Los Angeles, this schedule being based on a 16-cent rate per 100 pounds for first class traffic. Thus Los Angeles, by a combination of circumstances, becomes a "terminal point."

Proceeding northward to central California, the first terminal that we find is San Jose, which is some ten or twelve miles removed from the Bay of San Francisco and cannot be reached by water; but it enjoys the advantage of being upon the original line of railroad which was built around the southern end of the Bay of San Francisco. Moreover, it is possible to transport freight from San Francisco to San Jose by water and wagon, and by rail, for perhaps $1 a ton.

Without continuing this inquiry into the geographical position of the various terminals, it may be stated in general that around San Francisco there has been thrown a cordon of terminal points extending from San Jose, on the south, to Marysville, on the north, to which points terminal rates are

given—that is, rates which are the same as to San Francisco—but to none of these points do the ocean steamships ply directly in the carriage of west-bound freight. That is to say, although San Francisco is the only city in central California which enjoys direct water competition with the Atlantic seaboard, the railroads serving that city have, as a matter of policy, given to many of her neighbors the same rates that she enjoys, and because of railroad competition the steamship lines which reach San Francisco now give these cities the same rates as are given to San Francisco. The steamships absorb the local transshipment rates from San Francisco to interior points, because it has been railroad policy to establish these additional terminals not directly upon the ocean and not served immediately by the ocean carriers. The justice of this policy we do not herein pass upon. The city of San Francisco insists most strenuously herein that if the carriers justify a variation from the requirements of the long-and-short-haul section by reason of the fact that ocean carriers can deliver Atlantic seaboard business at that port for a certain figure, it is unfair to extend the advantage which San Francisco enjoys to interior points not equally well situated. The interior cities not so favored say that if such extension is made to these interior bay or river points it should logically be carried farther east to such cities as Reno, Fresno, and San Bernardino, because the granting of those rates to points where they are not compelled is an admission of their reasonableness or else it is a pure matter of railroad policy which effects a discrimination against an actual sea competitive point.

From this rough sketch of the Pacific coast terminal situation it is at once perceived that it is not the result of the rigid application of any principle based entirely upon sea competition, for terminal rates are given to cities which are not upon

the ocean, and the railroads themselves in some cases have forced the sea carriers to absorb inland rates in order to meet railroad competition at these interior terminal points. In passing, it may be said that the population of California is approximately two and a half millions, of which it is estimated by Mr. Chambers, of the Santa Fe, that two million are at, or within 30 miles of, terminal points.

Turning our eyes eastward and regarding the territory in which originates this traffic, it is at once appreciated that the same rate applies whether the traffic comes from New York harbor or from Chicago or Kansas City. Now, it is not contended that there is any direct water competition from Chicago or Kansas City, or the territory intermediate between the Missouri River and New York. How, then, does it come about that the same rates apply from inland points as from seaports? To answer this question it may be well to look back over the very remarkable history of the long-fought struggle between the transcontinental railroads and the ocean carriers.

THE TROUBLOUS SEA.

In 1869, when the Union Pacific and Central Pacific railroads were united at Promontory Point, Utah, there was no such thing as a trancontinental rate, excepting as it was made up of a combination of locals. In fact, at that time it was not expected, so Senator Stanford has testified before a Senate committee, that there would be any real competition between the transcontinental railroad lines and the ocean carriers. The original purpose of constructing the Central Pacific road, so far as its California promoters were concerned, was to carry eastward from the Pacific coast to the interior, and the rates made across the Sierra Nevada Mountains were made to meet and overcome the then existing competition of the mule team.

It was not the primary purpose to extend this road across Nevada, but only to furnish a means of communication between the city of Sacramento and the rich mining towns along the ridge of the Sierra Nevadas and on their eastern slope. Confessedly it was the lure of the Government subsidy which induced the extension of this line to the eastward. The purpose of the Central Pacific was to act as the distributor of the ocean-borne freight which was brought into the Bay of San Francisco by sailing ship coming in around the Horn; and for some time following the establishment of this through transcontinental route no serious effort was apparently made to induce the all-rail overland movement of traffic, which did not require especial or express service.

The first through rate published was an open rate of $8 per 100 pounds, first class. This rate was scaled down, being lower from Pittsburg, and still lower from Chicago and other points. When competition was begun with the clipper ships out of New York, class rates were reduced to a $6 scale, and these were graded from the east westerly. Commodity rates were also at this time established in an effort to take from the ships important volumes of business. These open rates, however, were found to be unsuccessful in developing any considerable amount of transcontinental business, owing to the fact that whatever rates the railroads made were met by the boat
346 lines. Accordingly, in 1877 the Union Pacific and Central Pacific, which worked together in this matter, instituted what is known as the special contract system, under which they published two rate sheets, one known as the "white list" and the other as the "pink list." The white list contained the open or public rate; the pink list contained the contract rate. Contracts were made with individual shippers that if they would give to the railroad line all of their traffic for a year to the

exclusion of ocean carriers they would have a rebate down to the figure fixed in the pink list.

The battle began in earnest at this time between the railroads and the ocean lines. Whatever competition there had been before was insignificant when compared with that which followed the year 1877. At that time the railroad interests evidently determined upon driving the ships from the sea, and they very proudly admit that they succeeded in this effort at least to the extent of nullifying or controlling the water competition. The jobbers of the Pacific coast were individually dealt with; their waybills by the water lines were furnished to the railroad, from which it estimated the volume of traffic and the amount of charges paid thereon by the shipper. Upon this basis a rate was made by adding to the ocean charge an additional allowance for the saving in insurance arising out of movement by rail, the saving in interest upon the value of the freight, and an additional amount for the comparative certainty of delivery and expedition. Different rates apparently were made to different shippers. This secret contract system, by which a rate was made to each individual, firm, or shipper, was a logical application of the principle that the carrier should charge what the traffic would bear. For several years this system was successfully pursued with increasing advantage to the railroads; but under the pressure of strong popular agitation, and owing to the fact that the shippers were in many cases found to have broken faith, the railroads determined upon again publishing but one rate. To arrive at this rate they adopted a policy of "harmonization," as it was termed; they averaged the rates upon various commodities which had been charged to various shippers and made a new schedule of rates, from which they varied as emergency might require or expediency advise by the current method of rebating.

Thus far we have taken no account of the Panama route, which had been open and operated since the early days of the rush to the gold fields. This route was in the control of the Pacific Mail Steamship Company. In 1871, hardly two years after the opening of the transcontinental rail route, the Union Pacific and Central Pacific railroads entered into agreement to subsidize the Pacific Mail, buying its space at an agreed figure, and often running the steamships empty. This arrangement was continued until 1881, when the steamship line
347 was turned over to an association known as the transcontinental association, which continued the arrangement until 1893, so that during this period the Panama route offered no serious competition to the rail lines. And to continue the history of this negligible factor in sea competition, it may at this time be said that the Pacific Mail Steamship Company is now controlled, through stock ownership, by the Southern Pacific Company, and has been since the year 1900.

Throughout this period of competition between ocean and rail lines we find this interesting rate condition to have existed: Class rates to Pacific coast terminals increased with the distance and were higher from Atlantic seaboard points than from interior points; commodity rates, however, which were created to meet special conditions at the seaboard—the weapons fashioned for the destruction of the clipper ships—were lower at the ports than at the interior points. In the language of Mr. Luce, of the Southern Pacific—

> Commodity rates were scaled up from the seaboard in the first instance, but the class rates were scaled down from the seaboard. There was always a higher class rate from New York than from Chicago, but often a lower commodity rate from New York than from Chicago.

In 1883 a new competitor entered the field—the Sunset-Gulf route, a water line from New York to New Orleans, owned by

and connecting with the Southern Pacific line from New Orleans to San Francisco. This new line was looked to by the carriers generally to "take care" of water competition, in the significant language of a Southern Pacific official. It entered upon the work with such heartiness that before long the Pacific Mail alone kept on its perfunctory way between Panama and the Pacific coast terminals. The clipper ship as a competitor had been destroyed, Pacific Mail had been subsidized, and the transcontinental lines were in control of ocean as well as land transportation.

It is the estimate of the Southern Pacific that of all the traffic moving from the Atlantic seaboard to California from 1885 up to 1891 the Sunset-Gulf route carried from 75 to 90 per cent, and of the balance practically all went by rail. The aggressive policy of the Southern Pacific Company in instituting a water line of its own between the Gulf and the Atlantic drove its water competitors out of the field and took from the rail lines all but the most insignificant proportion of transcontinental traffic. Those were the fine free days when "all sorts of rates could be had and all sorts of tariff could be found."

THE SANTA FE ENTERS THE FIELD.

By the year 1885 competition by sea was not more than nominal. In that year, however, the Santa Fe, being completed to Los Angeles, came into the field claiming its share of transcontinental business destined to its new terminal, California. Up to its coming, and for some years prior, com-
48 modity rates had been graded up from New York; that is to say, the rates from Pittsburg territory to California, and from Chicago to California, were higher than from New York. The theory of the rail carriers was that they should meet the com-

petition at the point where the competition actually existed—at the seaport. But the Santa Fe had its eastern terminus in Chicago. It found the Sunset-Gulf route carrying practically all of the Atlantic seaboard business at rates below the all-rail rates—at any rate that it chose to fix. In its view it was all well enough for the Southern Pacific to send out from the Gulf its own boats that would drive all rivals from the ocean, but because it had done this service to the rail carriers it was not to follow that all the traffic was to remain in the possession of the Southern Pacific. Whatever rates, therefore, the Sunset-Gulf route chose to make at New York the Union Pacific and Santa Fe declared they would make from Chicago. This determination of railroad policy was given the name of "market competition." It was said that the great middle west was building up and should have its opportunity to compete with the Atlantic seaboard for the developing trade of California. The Santa Fe did not reach New York; the Southern Pacific did; the Santa Fe would give to Chicago and to St. Louis and to Kansas City the same opportunity to feed and clothe the people of California that the Southern Pacific gave to the people of New York and Boston. Then followed an interesting rate war, which culminated in 1887 in the installation of a new set of graded rates, this time scaling lower as they receded from the Atlantic seaboard.

The date in this case is significant, for in that year (1887) the act to regulate commerce went into effect. In this connection the testimony given by Mr. Luce, the assistant to the vice-president of the Southern Pacific Company, in response to questions by the Chairman of the Commission, is illuminating:

> The CHAIRMAN. You spoke this morning of a truce, or something of that nature, which the carriers entered into

just before the passage of the act to regulate commerce, about 1886, I think.

Mr. LUCE. Yes, sir.

The CHAIRMAN. If I understood you correctly, all special contract rates went out of use about 1881?

Mr. LUCE. The special contracts themselves; yes, sir—1881.

The CHAIRMAN. And then, between 1881 and the time of this truce, they were published rates?

Mr. LUCE. Yes; individual lines published rates.

The CHAIRMAN. But they were not adhered to much, as I understand it?

Mr. LUCE. Not very much.

The CHAIRMAN. I say, by rebate or otherwise—

Mr. LUCE (interposing). They were departed from.

The CHAIRMAN. Yes. Now, what was the nature of that truce? What did you mean by that?

Mr. LUCE. Just prior to that time that I had in mind; there had been a very severe war in rates. I do not know whether that was the reason for the creation of this Commission or not, but the struggle had been very disastrous; two or three lines, I think, were very much crippled, going into the hands of receivers; and just before the act was passed, effective in April, 1887, I think, the lines got together and said, "Here, let us stop this foolishness; let us have some standard of rates and see what we can do on that basis." I believe the rates were made 50 per cent of the old tariff rate that had been used for two or three years. I presume the carriers thought that it would not be judicious to put their rates right up to standard 100 per cent, so they decided on a 50 per cent tariff.

The CHAIRMAN. You mean 50 per cent more than the published rate, or 50 per cent of the published rate?

Mr. LUCE. Of the published rate. The class rate at that time moved a great deal of the traffic. The commodity rates were not as many, nearly as many, as they are to-day. The commodity list has grown, as all know, year by year. I believe in 1894 there was something like 2,000 commodity rates, whereas to-day, as stated, there are about 3,300 to 3,500 articles upon which commodity rates apply.

The CHAIRMAN. Now, about what was the rate on first class along in the eighties, just before this truce of which you speak?

Mr. LUCE. I think the rate from—

The CHAIRMAN (interposing). From New York to San Francisco?

Mr. LUCE. I think the rate from New York was on a $6 scale in those days, or $5. I will not be sure. It seems to me it was a $6 rate from New York, and I think $5 from Chicago.

The CHAIRMAN. Then that resulted in putting in about a $3 rate on first class?

Mr. LUCE. Yes. I do not recall whether the through rate from New York was put down on a 50 per cent basis or whether that 50 per cent applied only from Chicago, but my impression is that it applied from New York, although I won't be positive as to that.

Mr. LYON. I have the rate from New York, July 18, 1887, if you want it—$3.

The CHAIRMAN. That is about what it was made when the act took effect.

Mr. LUCE. Yes.

Mr. LYON. It was $2.10 from the Missouri River, $2.30 from the Mississippi River, $2.40 from Chicago, and $2.50 from Buffalo, and $3 from New York on July 18, 1887.

Mr. LUCE. That probably was not 50 per cent, then.

The CHAIRMAN. That means your published rates, which your line had published up to that time in the eighties, were probably about twice that much?

Mr. LUCE. Yes, sir.

The CHAIRMAN. And yet that was an effort to bring together a stability of rates, and to get more out of the traffic than you had been getting during this war, I suppose?

Mr. LUCE. Yes, sir.

The CHAIRMAN. So that as a mattter of fact, prior to that, you had not been getting even as much as the $3 basis, or the 50 per cent basis?

Mr. LUCE. No, sir.

The CHAIRMAN. It was a general departure from the so-called published rates of more than 50 per cent?

Mr. LUCE. Oh, yes.

The CHAIRMAN. More than cut in two?

Mr. LUCE. Yes. The Sunset in those days made a rate sometimes of 50 cents a hundred pounds on everything. I know we did east-bound. I think I hold the record on carrying from New York the cheapest carload that was ever carried. It was a carload of bamboo steamer chairs. I quoted a rate of 50 cents, and I think the entire carload from New York brought us $9.40 on the weight. We carried beans as low as 25 cents. That is by the Sunset-Gulf route.

350 We find then with the first tariffs that were filed with the Commission a $3 first class rate from New York to San Francisco, a lower rate obtaining from Pittsburg, a still lower rate from Cincinnati, and so by steps to the Missouri River. These graded rates remained in effect until 1889, when we find the first evidence of the institution of a great eastern blanket of class rates. This was at first not formally recognized in the tariffs, but was enected by eastern carriers through a system of rebates from the published rates.

Things appear to have gone peacefully for the next few years. The only serious competition which the railroads met by water was that of the Southern-Pacific-Sunset line from New York, which apparently applied from the New York piers whatever the all-rail rates were from Chicago. Of course during this period, or any other period, until recently it is impossible to say just what the rates actually paid were. We are dealing, however, with the "paper rates."

A MERCHANT'S LINE.

Live ocean competition being out of the way, and the railroads having come to an understanding as between each other, matters went smoothly until the San Francisco merchants, in 1892, being roused to activity by a recent increase in the

transcontinental rates, instituted a boat line of their own. This brought on another rate war, in which the merchants lost heavily, and rates were reduced by the rail lines to absurdly low figures. The lines east of Chicago and those west fell out over the division of the joint through rates, and for a time there were no joint through rates extending from points farther east than Chicago, and blanket rates were made by the western carriers from Chicago, Mississippi River and Missouri River points. After the railroad lines had killed off the San Francisco merchants' steamship line, losing thereby several million dollars, they came to an agreement with their eastern connections as to a new basis of divisions and a new scheme of rate making.

Thus we come to the year 1896, at which time the blanket system at present obtaining was first authoritatively announced. This blanket extended from the Missouri River to the Atlantic seaboard. We hear very little of water competition for the next three or four years. In 1900, however, the American-Hawaiian Steamship Company established its first steamer line through the Straits of Magellan. In 1900 also, as we have already seen, control of the Pacific Mail was purchased by the Southern Pacific Company. Neither one of these facts seems to have disturbed transcontinental rail rates.

In 1906 another step forward was made in the matter of water competition by the opening of the Tehuantepec route. The American-Hawaiian Company, under an arrangement
351 made with the Mexican Government and with the sugar planters in the Hawaiian Islands, instituted the most satisfactory service which up to that time had obtained between the Atlantic and Pacific seaboards by water. East-bound tonnage was furnished by Hawaiian sugar, and west-bound tonnage was gathered at the Atlantic seaboard.

In 1907 the volume of west-bound business carried to Pacific coast terminals via this route was 112,395 tons; in 1908, 117,203 tons; in 1909, 204,000 tons; in 1910, 239,500 tons. The total volume of transcontinental tonnage was, two years ago, estimated by the carriers at 3,000,000 tons per annum, while the total water-borne traffic is about 10 per cent. of this figure. Inasmuch as the traffic of the country increases at the rate of nearly 10 per cent. per year, it would appear that in nearly four years ocean competitors of the transcontinental rail lines have been enabled to secure a total tonnage of approximately the normal increase in west-bound transcontinental freight for a single year. In giving this figure we are allowing to the American-Hawaiian line all the advantage of the accumulated business of the six years preceding 1906, in which it had in operation its steamship line through the Straits of Magellan. Considering that this carrier has reduced its time of movement between the Atlantic and Pacific to an average of a little more than 25 days and gives a service that never before has been equaled by an ocean line, the slight increase in its tonnage either evidences that all-rail rates are more attractive for the great volume of business or that the water rates are maintained at a figure so nearly approximating those extended by the rail lines as not to overcome the difference in the service.

THE OCEAN "NEUTRALIZED."

We have thus traced the history of this protracted struggle between the ocean and the land carriers that we might clearly appreciate the strategy of the railroads and its effect upon the ocean-borne traffic. One water route after another has been rendered innocuous. To meet the competition of the railroads the tendency of the ocean carriers has been to

shorten the time consumed in passing by water from coast to coast. The clipper ship has been forced to give way to the steamship and the steamship has been compelled to transship by rail a portion of the distance. The routes by way of Cape Horn and the Straits of Magellan have been virtually abandoned. For nearly 40 years the Panama route has been under railroad control. When an attempt was made to reestablish this route as a vital competitor, the railroads used their own ocean-and-rail line to eliminate it from the field. So that for several years there has been but one ocean line which apparently has no railroad connection, that of the American-Hawaiian Steamship Company; and this line lives
352 upon sufferance, its rates being made with the knowledge of the railroad company and with a more or less definite relation to the transcontinental rail rates. Within the past few months another water competitor has entered the field, the California-Atlantic line, which has done an extensive business both east-bound and west-bound for the short time that it has been in existence, but the prophecy made by the railroad witnesses is that it will not last long.

In the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition. For 30 years and more their effort has been to "neutralize and control" such competition, in the phrase of Mr. Stubbs, vice president of the Southern Pacific system. While they have subsidized, bought and controlled the water carriers, there has always been present to the mind of the traffic manager of the transcontinental railroad the existence of the ocean and the possibility of its use. Without a ship upon it the ocean has the power to restrain, in some degree, the upward tendency of rail rates. A railroad may not safely indulge its desire to impose all the traffic will bear between two ocean ports, and it may truly be said that the least po-

etical of railroad traffic managers never looks upon the ocean without a sense of awe.

The railroads, moreover, must soon meet with a competition by water more intense than any that they have heretofore suffered, for within three years another route, one more important, searching and determinative in its effect upon railroad rates than any other, will be opened—a route all water by way of the Panama Canal. The cutting of this canal will in effect bring the Straits of Magellan 3,500 miles to the northward, and with modern steamships it is estimated that San Francisco will by water be removed from New York but 14 days.

EVOLUTION OF BLANKET SYSTEM.

While the ocean has been potent in affecting rates, it would be idle to say that we know or can ascertain the degree of this influence. In the very first place we do not know what rates the shippers paid. The published rates until within very recent years give no indication of what the actual rate paid was. And, furthermore, rates to the Pacific coast have been the subject of commercial forces and railroad policies to an extent which is probably without parallel in our railroad history. It may not be valueless, however, to review the rise and fall of class rates since the year 1887, when tariffs were first required to be filed, and to take a glance at the influence on commodity rates of the rate competition of the immediate past. As has already been noted, the first tariff filed with the Commission was one which is said to have approximated the actual rates which had been collected, and this was the result of a coming together of the carriers after a troublesome rate war. The scale as to first class

353 traffic ran: To San Francisco from New York, $3; from Pittsburg, $2.70; Detroit, $2.55; Chicago, $2.40; Mississippi River, $2.30; Missouri River, $2.10. This tariff was soon followed by another—that of January 16, 1888—which began with a rate of $4 from New York, the rate from Chicago being $3.25. On September 1, 1888, however, owing doubtless to this feud between the eastern and the western carriers which has been herein referred to, we find the $4 scale in effect; from Buffalo and Pittsburg, as from Toledo and Detroit, the rate, however, was $2.95; Chicago, $3.90; Mississippi River, $3.70; Missouri River, $3.50. Four months later, January 1, 1889, a rate of $4.20 from New York was put in, the difference between the New York and the Chicago rate being 30 cents. This set of class rates seems to have continued until April 11, 1893, when another rate war, as we have noted, was begun, these rates being on the scale of $3.70 from New York, $3.40 from Chicago, $3 from the Missouri River. But hardly were these rates in effect when all rates east of Chicago were canceled as of May 11, 1893, and for four years there appear to have been no joint through rates in effect from any point east of Chicago. On July 16, 1894, the rate from Chicago to the Pacific terminals was reduced from $3.40 to $2.40, which was the blanket rate from Chicago, Mississippi River and Missouri River territories. Three years later came an adjustment with the eastern carriers, by which they put in from New York, Pittsburg and Detroit a $2.40 scale, and thus for the year June, 1897, to June, 1898, the $2.40 scale from all points east of the Missouri River obtained. This was the first blanket from the Missouri River to the Atlantic seaboard. Hitherto the rates had been graded up to New York, the more distant point carrying the higher rates as to class traffic. However, on June 25, 1898, a $3 scale covering the same territory went

into effect. Not yet, however, was the blanket perfect, for neither in the scale of 1897 nor in that of 1898 were the same rates carried from points west of Chicago that were carried from Chicago and points east thereof. This was remedied, however, on January 18, 1904, six years later, when the rates on the lower classes from the Missouri River and the Mississippi River were raised to equal those of Chicago. For five years this condition continued, until on January 1, 1909, a further increase in the lower classes was made, but this time as to New York and Boston territories, the increase being effected by eliminating the blanket rates as to all classes below fifth.

RATE CHANGES IN TWENTY YEARS.

If we make a further study of these tables which will be found appended hereto (see Appendix A) as to the rates from Chicago, Mississippi River and Missouri River points, we will observe some facts that are not uninteresting. The rate today from the Missouri River to the Pacific coast is 90 cents
54 higher, first class, 85 cents second class, 80 cents third class, than it was nearly 25 years ago. The lowest class which we now have is class E, which from the Missouri River at present is 95 cents; the lowest class in 1887 carried a rate of 68 cents. From the Mississippi River the lowest class is today 20 cents higher than in 1887; the highest class is 70 cents higher than in 1887 from the Mississippi River. It is perhaps not altogether fair to compare the lowest classes because there were more classes formerly than at present. The rates from Chicago, Mississippi River and Missouri River for the four years 1894-1898 were 60 cents less, first class, than the present scale.

There have been two periods of intense water competition since the year 1887, when the act to regulate commerce went

into effect. One following the establishment of the Merchants' line via the Panama route, the other immediately following the establishment of the Tehuantepec route in 1906. The effect on commodity rates out of New York of the establishment of the Merchants' line of steamships has already been adverted to in the testimony given by Mr. Luce of the Southern Pacific. In order to ascertain the effect upon commodity rates of the establishment of the American-Hawaiian line we have secured from the carriers a statement of the fluctuations in their rates since the year 1906, from which it appears that notwithstanding the presence of what purports to be active water competition, commodity rates by the rail carriers have been increased rather than lowered during that period. Out of 1,535 commodity rates compared by the carriers it appears that no change has taken place since December 1, 1906, as to 696 of such commodities, reductions have been effected in 287, advances and reductions as to 132, and advances as to 418. Of the items increased, the rates of 318 commodities were increased from the whole eastern blanket. The reductions in the greater part were effected by taking single articles from the classification and giving to them commodity rates from all points of origin.

RAILROAD POLICY.

We have noticed how through the years this blanket of class and commodity rates has been drawn westward from the sea-competitive point until it extends two-thirds of the distance across the continent. How have the carriers justified this blanket to the coast but not to intermediate points? Long before the blanket had been stretched to its present western extent the communities intermediate between its eastern border and the Pacific made protest against the in-

justice that was being done. For nearly a quarter of a century this complaint has been heard and has ceased at times only to be revived with greater earnestness. A line of railroad policy which leads to such result may be presumed to
355 have in it something artificial and unnatural. That which appeals to us as unnatural in this situation is that rates which are said to be less than reasonable because compelled by ocean competition are made from points where we can find no such competition. It does Reno no injustice for the transcontinental lines to give San Francisco a rate from New York that will enable them to carry traffic as against the ocean carriers out of New York. By such policy Reno secures the advantage of her proximity to San Francisco, an ocean terminus. If the ships out of New York find it profitable to pay the railroad rate from Pittsburg to New York in order to take the freight from the transcontinental lines, a rail rate which will meet this competition at Pittsburg is permissible. It is fairly established that the influence of water competition does not cease at the Pittsburg-Buffalo line, but extends westward as to certain particular commodities, and doubtless for some distance west of Pittsburg the carriers may properly make rates which will prevent the movement eastward to the seaboard instead of westward over their lines, but we look in vain throughout the records of this Commission for 20 years to find any but the most fragmentary evidence that sea competition extends to Chicago. On the contrary, it is the admission of the carriers themselves that the rates which they make from Chicago to the Pacific coast terminals are established in order that the manufacturers and the jobbers of the west may compete on a level with the jobbers and manufacturers who have the advantage of a location at the Atlantic seaboard.

The most interesting discussion of this question to which

our attention has been directed is that which occurred some ten years ago in the course of what is known as the *St. Louis case, Business Men's League of St. Louis* v. *A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep. 318, between William F. Herrin, chief counsel of the Southern Pacific Company, and Paul Morton, then vice president in charge of traffic of the Santa Fe Railway, a portion of which directly touching upon questions of immediate interest is here inserted:

Mr. HERRIN. Should a railroad company in your opinion voluntarily take business where there is no competitive force operating; should it take business at less than a compensatory rate, full compensatory rate? Would you voluntarily put in these rates if there was no water competition between San Francisco and New York?

Mr. MORTON. I do not think we would.

Mr. HERRIN. You would not voluntarily make these low rates?

Mr. MORTON. Water competition is the controlling force.

Mr. HERRIN. That forces you to either take the business at those rates or not take it at all?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Well, as a matter of policy, should a carrier take any business at less than a compensatory rate where it is not compelled to do it, where there is no competitive force?

Mr. MORTON. In many cases we do it to encourage an industry or to in some way provide for future benefits.

356 Mr. HERRIN. But as a general rule? That would be the exception to the general rule?

Mr. MORTON. It is all done for selfish motives.

Mr. HERRIN. For what?

Mr. MORTON. For selfish motives—either from some benefit to be obtained at once or in the future.

Mr. HERRIN. You could not put your rates, could you, on the basis of the rate from New York to San Francisco—reduce all your intermediates to that basis or less?

Mr. MORTON. I think it would be a very great hardship if we had to do that.

Mr. HERRIN. As a financial proposition, you are compelled to maintain the present intermediate rate, or something near that?

Mr. MORTON. We think so.

Mr. HERRIN. Is there any case of graded rates where the rate from Chicago to San Francisco is no more than your proportion of the through rate from New York?

Mr. MORTON. I do not think so.

Mr. HERRIN. There has been no case where you have made the graded rate as low as your proportion of the through rate?

Mr. MORTON. I do not think so.

Mr. HERRIN. What is about the proportion that the roads west of Chicago take of the through rate?

Mr. MORTON. From New York?

Mr. HERRIN. Yes, sir.

Mr. MORTON. About 75 per cent.

Mr. HERRIN. As I understood you yesterday, you justified the graded rate from a selfish standpoint?

Mr. MORTON. Well, yes—not only a selfish standpoint, but other standpoints.

Mr. HERRIN. That is, for building up the Santa Fe?

Mr. MORTON. Giving the people the benefit of advantages which they should naturally enjoy.

Mr. HERRIN. Give which people?

Mr. MORTON. The interior.

Mr. HERRIN. That is, the middle west points?

Mr. MORTON. Yes, sir.

Mr. HERRIN. If you give them the same rate that New York gets, you do pretty well by them, don't you?

Mr. MORTON. I do not think we are doing particularly well for them.

Mr. HERRIN. Why?

Mr. MORTON. Because I think, owing to their geographical location, they are entitled to a better rate than New York.

Mr. HERRIN. New York gets a better than compensatory rate on account of water competition. The middle west has not got that water competition.

Mr. MORTON. But the water competition is a controlling influence.

Mr. HERRIN. But it does not control the middle west rate.

Mr. MORTON. They have to compete with the water competition in the marketing of their goods on the Pacific coast.

Mr. HERRIN. But the middle west has not got the water competition itself?

Mr. MORTON. They have it to a degree. That establishes the price at which they can market their goods on the Pacific coast. I do not know how much greater they could have it. I think they have got it.

Mr. HERRIN. They get it through market competition?

Mr. MORTON. Market competition; yes, sir.

Mr. HERRIN. When you have given the middle west the New York rate, which itself is compelled and not fully compensatory, why ought you to give them any
357 less, considering now the middle west, not the railroad? What right have they to any better rate than New York?

Mr. MORTON. Well, if we hauled their goods as cheap as we hauled goods for the New York man, we would give New York a much better rate.

* * * * * *

Mr. HERRIN. Your rate from Chicago to San Bernardino is higher than your rate from Chicago to Los Angeles?

Mr. MORTON. But there is no discrimination as between the Chicago and the Los Angeles merchant.

Mr. HERRIN. I am asking you if the rate to Los Angeles is not higher than to San Bernardino?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Why do you charge the San Bernardino man more than the Los Angeles man?

Mr. MORTON. San Bernardino is given the benefit of the competition Los Angeles has and is charged the local back from Los Angeles. The Chicago man is not discriminated against. We treat the Chicago man as well as we treat the Los Angeles man. Where is there any discrimination?

Mr. HERRIN. Why don't you treat the San Bernardino man as well as you treat the Los Angeles man?

Mr. MORTON. There are several reasons. The Los

Angeles man is a little nearer the sea, and the question of market competition does not come in.

Mr. HERRIN. That is, you do not treat him as well because you are not obliged to?

Mr. MORTON. That is probably the chief reason—or because we can not afford to, I will say. There is not any first-class reason except the one that we can not afford to.

Mr. HERRIN. You justify giving the Chicago points the same rate as the Atlantic coast, largely on the theory of building up Chicago and building up the middle west?

Mr. MORTON. Yes, in the sense of equity.

Mr. HERRIN. Well, why should you not build up your Pacific coast intermediates in the same way?

Mr. MORTON. I am not sure that we won't have to do that some day.

Mr. HERRIN. Is there no reason why you should discriminate in favor of a town nearer Chicago, like San Bernardino?

Mr. MORTON. There is a difference of market competition.

Mr. HERRIN. That is the only reason?

Mr. MORTON. That is a reason.

Mr. HERRIN. Market competition operates at the eastern points and not at the western?

Mr. MORTON. Yes, sir; it operates everywhere. If San Bernardino came in competition, if it were selling goods on the Pacific coast in competition with San Francisco, or had a manufactory there and was making something, iron or steel, they would probably be put on a basis where they would get fair treatment. I certainly would be in favor of it.

Mr. HERRIN. The mere fact that Chicago is a large place does not entitle it to a better rate than any other place similarly situated, does it?

Mr. MORTON. I think not.

Mr. HERRIN. No argument could be made justifying the lower rate because of being a larger place?

Mr. MORTON. No, sir; I think there is no difference except so far as Chicago is selling goods in competition with the world. Market competition comes in there.

Mr. HERRIN. San Bernardino sells goods, does it not?

Mr. MORTON. Hardly in competition with the world.

Mr. HERRIN. It distributes goods?

358 Mr. MORTON. On any goods it produces there they are fairly treated.

Mr. HERRIN. Does Chicago produce everything itself?

Mr. MORTON. No, sir; but outside of the manufactured goods—

Mr. HERRIN. It is shown in the case that many of the goods in controversy are brought from points east of Pittsburg.

Mr. MORTON. Yes, sir.

Mr. HERRIN. So far as San Bernardino is dealing in goods brought from other points there and has merchants selling and distributing there, it is situated like Chicago, isn't it?

Mr. MORTON. No, sir.

Mr. HERRIN. It is a smaller place, but it is like Chicago in the respect I mentioned?

Mr. MORTON. No, sir; hardly.

Mr. HERRIN. Goods are sold there?

Mr. MORTON. Not for distribution to other points; retail to the consumer only, I think.

Mr. HERRIN. To some extent they are sold there for distribution?

Mr. MORTON. Not for distribution to other places; I think it is very limited. No one would compare San Bernardino with Chicago or St. Louis.

Mr. HERRIN. Rate conditions are different?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Now if the rate conditions at San Bernardino were the same as at Chicago, would not that increase the distribution of goods there?

Mr. MORTON. I don't know.

Mr. HERRIN. Suppose you gave the San Bernardino merchant the Los Angeles rate to San Bernardino; would that not give him an advantage over what he has now in distributing and selling?

Mr. MORTON. I think it would.

Mr. HERRIN. Suppose you gave him a lower rate, a graded rate, lower than you gave Los Angeles, on account of its being a lesser distance, just as you propose

to give to Chicago; would that not increase his area of distribution?

Mr. MORTON. It might. I think we would do it if San Bernardino were the same size as Chicago.

Mr. HERRIN. You said a while ago that size ought not to fix the rate.

Mr. MORTON. It oughtn't, but it does.

Mr. HERRIN. Now, then, don't you think that when you give to Chicago the same rate that you give to New York and you deny to San Bernardino the same rate that you give to Los Angeles, don't you think there is a ground for saying you have discriminated?

Mr. MORTON. I think it is a discrimination, but it is not an unjust discrimination; nobody is damaged. The Chicago merchant or manufacturer is competing with New York; he is trying to sell goods on the coast in competition.

Mr. HERRIN. How about the San Bernardino man?

Mr. MORTON. The San Bernardino man can not be compared with the Chicago man or the New York man, in my opinion.

Mr. HERRIN. Why not? He is buying goods, just as is the Chicago man from other points, and wants to sell them or distribute them. He is in that business, and how can we put him on a different principle except upon the question of volume of business?

Mr. MORTON. Market competition.

Mr. HERRIN. Market competition operates there as to his business just the same?

Mr. MORTON. If he was buying goods to job on the Pacific coast afterwards or manufacturing goods.

Mr. HERRIN. He would ship them anywhere he could sell them, wouldn't he?

Mr. MORTON. Yes, sir.

Mr. HERRIN. And if he had the rates, he could do it?

Mr. MORTON. I admit that. I don't deny there is a discrimination against San Bernardino, but I question whether it is an unjust discrimination.

Mr. HERRIN. Now suppose we take Fresno. They have some jobbing houses there?

Mr. MORTON. I believe so, a small one; they are after us for terminal rates right along.

Mr. HERRIN. Have you given them terminal rates?

Mr. MORTON. Not yet; we may some day. It is a question altogether of policy.

Commissioner PROUTY. If you give Fresno the terminal rates, can you defend a higher rate at points between Fresno and San Francisco?

Mr. MORTON. I do not think so.

Mr. HERRIN. Do you think you ought to give Fresno the terminal rates?

Mr. MORTON. I don't think so; no. I would dislike very much indeed to do it, because it would affect our earnings very materially. I do not think we can afford to do it, but we may have to do it some day.

* * * * * *

Mr. CHRISTIE. Where there is movement of freight from markets, is there not a difference between market competition which you have alluded to several times—a difference between market competition from markets and competition to various points of destinations?

Mr. MORTON. I think there is.

Mr. CHRISTIE. It not that one of the reasons why you might have the rate graded from points in the east and might not grade them to points in the west?

Mr. MORTON. That was my statement; at least that was what I tried to testify to.

Mr. CHRISTIE. And if it be true that the rate and the route upon which transcontinental traffic is based is the ocean rate and route, would not that be a reason why the rates to the terminal points, all rail, in competition with this ocean rate should be less to San Francisco than to the interior point?

Mr. MORTON. I think so.

Mr. CHRISTIE. Do you not have to refer at all times to your basing rate?

Mr. MORTON. We do almost always.

Mr. CHRISTIE. And if it be true that the ocean rate is the basing rate, then would not at all times the rate to the interior point, so far as that competition reaches and so far as that rate does operate as the basis—would not the rate to the interior point be more than the rate to the coast point?

Mr. MORTON. Generally speaking.

Mr. CHRISTIE. Now, Mr. Herrin has suggested that the Atlantic coast manufacturer or jobber will not quietly see business moved from the Atlantic seaboard to the middle west, and yet he has stated to you as a basis upon which to put a question that the business has moved from the Atlantic seaboard to the middle west in the past, and Mr. Stubbs reiterated the same thing, that a very large percentage of the business that used to move from the Atlantic seaboard is now moved from the middle west. Is there any reason why the Atlantic seaboard merchant could not have prevented that in the past just as well as he can prevent further movement in that direction in the future?

Mr. MORTON. None that I know of.

Mr. CHRISTIE. Has he not always been just as able to use the ocean as he is today?

Mr. MORTON. I think so.

Mr. CHRISTIE. I believe you stated that after the Southern Pacific acquired the Morgan line, and not before that time, the Southern Pacific opposed graded rates?

Mr. MORTON. Yes, sir; after they acquired the Morgan Steamship line—

Mr. CHRISTIE. I am trying to make this distinction. The graded rate existed from 1883 to 1893, and then I think from 1893 to 1896 the rate was based on Chicago so that there was a higher rate from eastern points than from Chicago; so that the graded rate was not abrogated at the time the Southern Pacific bought the Morgan line. But did not the Southern Pacific oppose the graded rate from the time it became a carrier from ocean to ocean?

Mr. MORTON. Well, I was out of the transportation business from 1890 to 1896, and I do not know what the position of the Southern Pacific was. I know in a general way that they declined to make—I know in a specific way that they declined to make—the interior rates as low in some cases as the New York rate was.

Mr. STUBBS. That was since 1896?

Mr. MORTON. No; that was prior to 1896.

Mr. STUBBS. Prior to 1893?

Mr. MORTON. About 1895—1894 or 1895.

Mr. STUBBS. Since 1893?

Mr. MORTON. Well, since 1893, I guess; 1894 or 1895. I refer to the Colorado Fuel & Iron rates I went after and did not get.

Mr. CHRISTIE. Has not the multiplication of transcontinental rail lines tended more and more to make the rail lines the primary lines for shipment to the Pacific coast as against the ocean lines?

Mr. MORTON. I think that the movement of transcontinental freight is greater than it ever was as compared with the movement by ocean, say the last year. I think it is greater than it ever was compared with the movement by ocean.

Mr. CHRISTIE. I want to know whether as a principle, given the ocean originally as the only means of communication between the Atlantic and Pacific, and that was once the case, the establishment of a transcontinental rail line would make that ocean route of less importance than before?

Mr. MORTON. I think so.

Mr. CHRISTIE. And would not the multiplication of rail lines, as you add one and then another and then another and then another, would not that have a tendency to make the rail lines the primary connections between the east and the west rather than the roundabout ocean route?

Mr. MORTON. I think that is a natural result.

Mr. CHRISTIE. I do not know how much you know about modern business methods—I do not claim to know very much myself—but in a general way is it not true that necessities of business today are such that jobbers on the Pacific coast would naturally more and more prefer the quick and regular service of rail lines to the irregular and uncertain and long service of the ocean steamship?

Mr. MORTON. I think they would on anything like an equality of rates.

Mr. CHRISTIE. Would you not say that is one of the reasons for the growing business of the rail lines in the transcontinental trade?

Mr. MORTON. That and the general prosperity everywhere in the United States.

Mr. CHRISTIE. You are aware of the fact that the Pacific coast merchants opened up to the railroad companies a new view of competition by water by saying to them frankly at the Del Monte meeting: "You gentlemen have been mistaken all the time in supposing that water competition is such a factor. The fact is that most of our goods do not move by water and would not if we had anything like a fair rate."

Mr. MORTON. I was not at the Del Monte meeting.

Mr. CHRISTIE. You have spoken of your interest being selfish in this matter in particular. Suppose you controlled a through rail line from New York to San Francisco. Would you not consider it a good economic management of that rail line to encourage all from the interior to the distant Pacific coast points, using the eastern end of your line for the shorter haul from the Atlantic to the interior points—I mean as against this ocean competition, whatever it amounts to?

Mr. MORTON. I so testified this morning. If we had a through line from the Atlantic to the Pacific coast, we would be just as much in favor of having the business done from the interior as now.

361 Mr. CHRISTIE. Your point of view is not a selfish one from the standpoint of a man controlling a line from Chicago.

Mr. MORTON. I think I called it "enlightened selfishness."

Mr. CHRISTIE. I thought perhaps the gentlemen on the other side did not know of that type of selfishness. Mr. Stubbs has given a reason for the possibility of the grade in the past, the fact that the ocean competition was either controlled or neutralized. I would like to ask whether there is any reason why the transcontinental lines are not as powerful to-day, and more powerful to-day than ever, to control or neutralize any competitive force—ocean competition or anything else.

Mr. MORTON. We are not allowed by law to do anything of the kind now.

Mr. CHRISTIE. You mean you would not be allowed by law to own steamships?

Mr. MORTON. If we had the money we could own them, but we could not fool with them.

Mr. CHRISTIE. Let me ask you if you mean that the law is the only thing to prevent the control or the neutralization of the ocean to-day for the purpose of controlling rates, if there is anything else besides law?

Mr. MORTON. Yes, sir, there are some other reasons. There is an independent steamship line that thinks there is money in the business and they are out for all they can make.

Mr. CHRISTIE. Can you tell me any reason why if that menaced the business and revenues of the transcontinental roads that the transcontinental lines could not own that steamship line?

Mr. MORTON. They could if they had money enough and did not think there would be another built immediately.

In the same case, Mr. Stubbs, testifying, said:

It is the question as to whether the rates are in themselves reasonable, and, if below that point, then the question is according to our judgment, and we think the ruling of the Interstate Commerce Commission originally and the law, or the proper construction of it, just in the degree that they can avail themselves of the same competitive conditions that New York can, just in that degree and no further they are entitled to the New York rate. That is the law as it has been expounded to me by our own counsel, and we have had three general counsel since the law has been enacted. * * * If Chicago, being an interior point, is entitled to a lower rate to San Francisco or the same than from New York, why is not Reno, Nev., that is near San Francisco and much nearer the ocean—can much more easily avail itself of ocean competition—why is not it entitled to a lower rate than San Francisco on the goods it receives from New York? It is entitled to it as we read the law. If Reno is entitled to a lower rate from New York or the same rate, then that is true of every point east of San Francisco in the state of California between here and New York, and the result is that the entire fabric, local and through, is brought down to the level of the competitive rates between New York and San Francisco compelled by the

sea route. * * * It is said that you can make one rule apply on shipments from a point to a point where water competition exists regardless of the fact whether the conditions at the initial point are governed by water competition or not, but that does not necessarily apply to the intermediate points. That is to say, you can make the rate from Chicago to San Francisco lower than the rate from New York to San Francisco, but in the application of that rule it is not necessary for you to make a rate from New York to Reno, New York being on the water, the only difference being that it is the initial point instead of the destination point in the case of San Francisco; but you do not have to make a lower rate from New York to Reno, and for that reason my friends of the Union Pacific and others think that they can make a lower rate from Chicago to San Francisco and yet charge a higher rate, as they do, from Chicago to Salt Lake City, charge a higher rate from Chicago to Denver, as they do, on many articles. That is our interpretation of the law.

362 Inasmuch as Mr. Morton gives as his only reason for not extending terminal rates to intermediate points the decrease in the revenues of his carrier that would result, it may be well to take a glance at the comparative earnings per mile of road made by the Union Pacific, Southern Pacific, and Santa Fe lines in the year when this testimony was given (1901) and the last fiscal year for which reports were made (1910).

Statement of gross and net earnings for years ending June 30, 1910 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Operating revenue.		Net operating revenue.	
	1910	1901	1910	1901
Union Pacific R. R.	$52,628,879	$25,472,600	$25,844,239	$11,040,177
The Atchison, Topeka & Santa Fe Ry.	86,971,313	35,349,805	31,025,848	15,427,074
Southern Pacific Co.[1]	[2] 95,189,005	55,376,299	[3] 42,560,475	22,120,466
Southern Pacific Co.[4]	[5] 124,523,905	[6] 77,244,898	[5] 51,009,871	[6] 28,146,871
Central Pacific Ry. Co.[4]	33,443,389	19,328,289	15,128,817	7,655,083

[1] Includes operations of Central Pacific Railway.
[2] Includes $2,046,573 revenue from operation of ferry steamers.
[3] Includes $1,234,158 net operating revenue from operation of ferry steamers.
[4] Data obtained from report of Southern Pacific Company to its stockholders.
[5] Data cover Southern Pacific Company and proprietary companies: Central Pacific Railway; Galveston, Harrisburg & San Antonio Railway; Houston East & West Texas Railway; Houston & Shreveport Railroad; Houston & Texas Central Railroad; Iberia & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad & Steamship Company; Nevada & California Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad; Southern Pacific Company; Texas & New Orleans Railroad; New Mexico & Arizona Railroad, and Sonora Railway.
[6] Data cover Southern Pacific Company and proprietary companies: Austin & Northwestern Railroad; Carson & Colorado Railway; Central Pacific Railway; Central Texas & Northwestern Railway; Fort Worth & New Orleans Railway; Galveston, Harrisburg & San Antonio Railway; Galveston, Houston & Northern Railway; Gulf, Western Texas & Pacific Railway; Houston East & West Texas Railway; Houston & Shreveport Railroad; Houston & Texas Central Railroad; Iberia & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad & Steamship Company; New York, Texas & Mexican Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad (of Arizona); Southern Pacific Railroad (of California); Southern Pacific Railroad of New Mexico; Texas & New Orleans Railroad; New Mexico & Arizona Railroad, and Sonora Railway.

Statement showing certain traffic statistics for the years ending June 30, 1910, and 1901 as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Average mileage operated during year.		Operating revenues per mile of road.		Net operating revenue per mile of road.		Number of tons carried 1 mile per mile of road.		Number of passengers carried 1 mile per mile of road.	
	1910	1901	1910	1901	1910	1901	1910	1901	1910	1901
	Miles.	*Miles.*					*Tons.*	*Tons.*		
Union Pacific R. R.	3,373.95	3,010.85	15,599	$8,460	$7,660	$3,667	1,091,053	588,690	167,336	[1] 70,704
The Atchison, Topeka & Santa Fe Ry.[10]	7,459.03	4,815.09	11,660	7,341	4,159	3,204	757,977	555,076	141,351	67,741
Southern Pacific Co.[2]	6,062.45	5,657.49	15,364	9,788	6,817	3,910	745,092	696,143	227,708	136,278
Southern Pacific Co.[4]	[6] 9,752.26	[5] 8,654.97	[6] 12,769	[5] 8,453	[6] 5,231	[5] 3,140	[6] [8] 816,477	[5] [8] 653,802	[6] 177,165	[5] 108,047
Central Pacific Ry.[3]	[7] 1,521.43	[7] 1,359.30	21,982	14,219	9,944	5,632	(9)	(9)	(9)	(9)
The Chicago, Rock Island & Pacific Ry	7,400.33	3,772.37	8,409	6,912	2,264	2,380	581,272	484,437	131,808	81,070
Chicago, Burlington & Quincy R. R.	9,023.06	7,753.13	9,738	6,398	2,755	2,228	824,016	499,326	131,870	68,818
Chicago & North Western Ry.	7,629.45	5,538.80	9,722	7,910	2,886	3,123	729,094	670,059	132,741	87,297
Chicago, Milwaukee & St. Paul Ry.	7,511.56	6,573.66	8,633	6,469	2,670	2,403	709,161	553,722	104,761	51,972
Northern Pacific Ry.	[8] 5,764.83	5,100.14	12,928	6,382	4,950	3,122	940,025	478,548	169,436	60,551
The Great Northern Ry	6,940.34	4,060.25	9,240	5,157	3,646	2,180	814,717	409,078	93,127	43,780

[1] Based on 2,935.91 average mileage operated in passenger service.
[2] Includes operations of the Central Pacific Railway.
[3] Data obtained from report of Southern Pacific Company to its stockholders.
[4] Covers Southern Pacific Company and proprietary companies: Central Pacific Railway; Galveston, Harrisburg & San Antonio Railway; Houston, East & West Texas Railway; Houston & Shreveport Railroad; Houston & Texas Central Railroad; Iberia & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad & Steamship Company; Nevada & California Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad; Southern Pacific Company; Texas & New Orleans Railroad; New Nexico & Arizona Railroad; and Sonora Railway.
[5] Data covers Southern Pacific Company and proprietary companies: Austin & Northwestern Railroad; Carson & Colorado Railway; Central Pacific Railway Central Texas & Northwestern Railway; Fort Worth & New Orleans Railway; Galveston, Harrisburg & San Antonio Railway; Galveston, Houston & Northern Railway; Gulf, Western Texas & Pacific Railway; Houston, East & West Texas Railway; Houston & Shreveport Railroad; Houston & Texas Central Railroad; Iberia & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad & Steamship Company; New York, Texas & Mexican Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad (of Arizona); Southern Pacific Railroad (of California); Southern Pacific Railroad of New Mexico; Texas & New Orleans Railroad; New Mexico & Arizona Railroad; and Sonora Railway.
[6] Covers commercial and company freight. The average for commercial freight only for 1910 is 678,797. No corresponding average returned for 1901.
[7] Represents mileage operated on June 30.
[8] Data not shown in report.
[9] Excludes mileage of "Industrial Spurs."
[10] See Appendix B for details.

Whatever the reason, the fact stands forth throughout this record that the source of supply upon which the far western communities largely draw their manufactures has within half a century moved westward from the Atlantic seaboard, so that, as was found by the railroad commission of Nevada from an analysis of the billing of actual shipments into Reno, 75 per cent. of their traffic coming from the east originated no farther east than the longitude of Chicago. There are cotton mills as far west as Kansas City; mining, milling and farming machinery is produced more largely in and about Chicago than in any other section of the country; boots and shoes, hats and clothes, cooking utensils and the multitudinous articles of domestic use may be secured in large part without coming east of the Alleghenies; in fact, the center of those industries which supply the far west apparently is not far removed from the center of population of the country. This is a pregnant fact. It was announced by the Santa Fe officials, when they opened their through line from Chicago to Los Angeles, that they thought it the part of wisdom to make their rates lower or as low from Chicago than from New York, so that the industries of the middle west might develop. They would make their line independent of their eastern connections in so far as that was possible, and instead of bidding against the shippers of the seaboard for traffic destined to the Pacific coast they would develop industries close to their own eastern terminus which would supply the western demand, and thereby develop a traffic for the lines west of Chicago which need not be divided with the carriers east of that city—an exclusive traffic, one which could be carried at rates more compensatory than any that

could be had out of the division of a through coast-to-coast rate.

This policy was determined upon by the carriers running west from Chicago 25 years ago. From the date of the first transcontinental tariff that we have upon the files of the Commission Chicago has never paid a higher rate to reach a Pacific coast terminal than has New York, either upon classes or commodities. The water competition of the seaboard has never been strong enough since 1887 to compel a reduction of rates from New York which the lines out of Chicago did not feel fully justified in meeting at that point. And, be it noted, at the time that this policy was begun there was no water competition between the coasts save by an occasional tramp boat and such other ships as the railroads themselves positively and admittedly controlled. It would not be claimed that this policy was the sole cause of the steady march of industry to the westward during the past quarter of a century. Nevertheless we find the fact that there is now hardly a need which the people of the far west have that can not be supplied from territory nearly 1,000 miles nearer to them than was their source of supply 25 or 30 years ago. Rates that were introduced then purely for market competitive reasons may be today reasonable in themselves. So, too, rates then established from Chicago to meet conditions at San Francisco, a competitive terminal, and justifiably made lower to that more distant point than to intermediate points, may in the course of years have become, by reason of increased volume of traffic, growth of population and new methods of operation so reasonable as to make the imposition of higher rates at intermediate points unjustifiable. We see strong suggestion of this in Mr. Morton's testimony given 10 years ago when none of these carriers was carrying nearly so large a traffic or operating so economically as they are to-

day, when the intermediate territory had not yet been exploited as it is now, when dry farming was unknown, and the irrigation of the desert through the aid of the government no more than a statesman's dream.

AN ARTIFICIAL ADJUSTMENT.

It is not provable, but there is much reason to support the statement that if all the producing territory—the fruit and vegetable growing, mining and lumbering territory—which does not receive the benefit of terminal rates, and which is compelled to pay the rate to the coast plus the rate back upon its commodities of eastern production, were taken from the transcontinental carriers they would be on the verge of bankruptcy in but a short time. Surely a railroad policy adapted to the conditions of one day may properly change with the conditions of another, and in the very nature of things it must be apparent that the transcontinental carriers can not continue forever charging higher rates to the intermountain country than to the coast from the middle west. The condition is too artificial to last. The carriers have taken from San Francisco in large part the advantage that she should enjoy from her situation upon the ocean by throwing around her a circle of terminal points 100 miles or so inland. By doing this they have forced water carriers to meet rail competition at these interior places, and yet the railroads urge that the rates are made to meet ocean-to-ocean competition. In the east they have stretched the blanket from Portland, Me., to Denver, Colo., a distance farther than from Antwerp to Moscow, but they refuse to admit that from any point along this long line it would be justifiable to make the rates given to the coast terminals applicable to Reno.

Furthermore, we find that this situation is artificial in that

it has been brought about by a procession of agreements between carriers. Each carrier has been appeased by giving to it something which would cause it to be satisfied with the
366 arrangement. The carriers have competed with each other across a table until their minds agreed upon a condition that would prevent rate wars. It is wholesome and beneficial that the body politic should not be disturbed by rapid fluctuations in rates of transportation which tend to destroy the stability of commerce and imperil the fortunes invested in such transportation facilities. If society does not undertake to regulate the methods by which a natural monopoly such as a railroad may be profitable conducted it is not to be expected that such a monopoly will not seek to protect itself, even at the disadvantage of the public it serves. The results of such self-protective measures, however, must be such as neither to offend the law nor be opposed to the development of the country and the instinct of its people for fair play.

If now we have apprehended aright the intent of Congress there comes before us upon an application for permission to deviate from the prohibitive clause of the fourth section the inclusive question whether by such deviation any provision of the act will be violated, and the burden rests upon the carrier to satisfy our minds that no such result would be effected by the granting of such permission—that no injustice will be done to the intermediate point with relation to the more distant point. As already said, the purpose of the statute which we are required to enforce is, succinctly stated, to preserve harmony between communities, individuals and carriers, to allay discord, and prevent, so far as may be, oppression and injustice. The unhampered exercise of a railroad policy may make for the material benefit of the carrier —at least for its immediate profit—but work a wrong with which the public must concern itself. To be concrete, it may

be (although this fact has not been established) that it is to the financial interest of the transcontinental carriers to make the same rates from the Missouri River as from Chicago, Pittsburg and New York to the coast cities which lie on or near the ocean's edge, and compel the intermediate points to base their rates upon these coast terminals; but this decision on their part is certainly subject to review, and when Congress says that this Commission "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section," it means to lodge with this body, if it means anything at all, the power to pass in judgment upon the effect of a railroad policy which departs from the intendment of the law. A community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate. A carrier may not say, "We will give to this community a reasonable rate" and meet the full requirement of the law; it must view its rates as a whole and see to it that they effect no advantage or preference to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other.

367 MARKET COMPETITION.

Ocean competition, say the carriers, brings about the lower rates from coast to coast; market competition produces the lower rates from the interior to the coast. We have considered ocean competition and see how real was its effect and how the carriers dealt with it. "Market competition" is a phrase with which the railroad traffic manager too often conjures. When no other force can be found which brings about a discrimination, market competition is advanced. It is both a sword and a shield; it is used to protect the carrier against attack because of undue discrimination as between

126

communities, and it is a weapon of offense as well, by which one carrier invades the territory of another upon a different basis from that which it grants to its own immediately dependent communities and forces concessions from its rival carriers.

Market competition, as we have seen, is a euphemism for railroad policy. The history of the fourth section makes clear that it was born out of a desire, and has been amended out of the purpose, to restrict the force and effect of market competition. The examples cited before Congress by those who have advocated an absolute long-and-short-haul section have largely been such as arose out of railroad policy, not such as were developed by transportation competition. Congress, however, has not seen fit to say (and perhaps most wisely so) that this economic force shall not be allowed to have its play in the making of rates. Market competition must be considered as one of those circumstances affecting a rate situation with which we are called upon to deal. But may it not be said that while the language of the statute does not say that market competition shall not be allowed to justify the charging of the higher rate to the nearer point, the very spirit of the section makes against the free application of any such justifying principle? A national policy may veto a railroad policy just as a public need may overcome and set aside a private desire. Experience has demonstrated to the National Legislature that it is not safe to leave to the carriers the determination of the question what markets should be brought into competition with one another. The policy of Congress seems to be that a railroad may be compelled by transportation competition to make its rates lower than it otherwise would between two competitive points, and that this will justify a breach of the prohibition of the fourth section; but the desire of a number of shippers to reach a

market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such policy will not unfairly discriminate against one community and in favor of another and will not produce those results which the law was intended to destroy. Clearly to allow for market com-
368 petition as a sole and controlling factor under the fourth section is to render it nugatory, for this would be tantamount to saying that a railroad could justify every discrimination as between communities by the assertion of nothing more than its own determination of policy.

We must regard the proviso in the fourth section as subordinate to the preceding clause prohibiting the higher rate for the shorter haul, and to carry out this intent of the law a carrier must establish before this Commission, in order to secure an order of exception thereunder, more than merely its own desire to haul a great volume of traffic between two distant points; it must prove that by such a policy it will not impose unreasonable rates upon any intermediate point, and that its policy will not work an injustice of which such intermediate point may fairly complain. Unless it does make such proof this Commission is not justified under the law in excusing it from adopting its rates to the more distant point as the basis for rates to the nearer points.

In this case and under these applications the Commission has given thought to many considerations not touched upon in this report, some of which are suggested by the tables to be found in the Appendix (C—D) hereto. Such, for instance, as the reasonableness of the transcontinental rates upon commodities in and of themselves when applied from different points of origin and the relation of the cost of service over the Central Pacific when delivery is made at Reno or at San Francisco. And when we have considered the return per

ton-mile yielded by many of these rates it is not remarkable that other carriers from the east have pressed forward, even to their own temporary financial embarrassment, to reach these coast terminals. No other carriers in this country enjoy such long hauls upon so great a volume of high-class traffic as do these transcontinental railroads. Their fine earnings are testimony to this effect, as well as to the competency of their management. If the principle that a railroad should charge what the traffic will bear is the criterion of railroad rates, no exception can be taken to the transcontinental situation, for it is masterfully designed to secure a maximum of revenue and yet develop such industries and benefit such communities as the railroad in its wisdom may wish to thrive, for the growth of the Pacific coast certainly is in no small part to be accredited to the discretion lodged in and exercised by the transcontinental traffic manager.

The coast cities—those that have direct access to the ocean—can not be materially injured by the policy of the law we have herein considered. They are rendered secure as entrepots of commerce by the presence of the ocean, so long as they choose to avail themselves of its advantages. There is much reason in this record, too, for the belief that they have at times chosen to forego these advantages in the expectation that they would be made secure by the rail carriers of a large
369 distributing market in the interior. With the introduction of a policy which removes from these interior points in some degree the disadvantage under which they have suffered with relation to eastern points of production it will become a matter of moment to the coast cities to avail themselves fully of the ocean as well as develop industries upon the Pacific coast itself which will compete with the industries of the east for the interior trade. That which has been done in the middle west within a generation may certainly be accomplished upon

the Pacific coast, so that there may come about a competition between real producing markets as well as competition between jobbing houses.

The carriers herein involved have not shown that undue discrimination was not effected by their rate adjustment between points in Nevada and points in California, nor have they established that the rates to the coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensatory.

We desire to be extremely conservative in this the first application of the new law, and to require an adjustment of rates that will be safely within the zone of our discretion. For this reason we have decided that the transcontinental carriers serving Reno and other points upon the main line of the Central Pacific shall make no higher charge upon any article carrying a commodity rate than is contemporaneously in effect from Missouri River points, such as Omaha and Kansas City, to coast terminal points. This principle we shall also expect to be applied on commodity rates to all main-line intermediate points in Nevada and California. Traffic originating at Chicago and in Chicago territory moving under commodity rates may have a rate seven (7) per cent. higher than that imposed on freight originating in Chicago and Chicago territory and destined to the coast terminals. From Buffalo-Pittsburg territory the rates to intermediate points may rise above those demanded and charged from the same points and territory to the coast terminals to the extent of fifteen (15) per cent., while from New York and trunk line territory the rates charged shall not exceed twenty-five (25) per cent. over and above terminal rates. This means that Suisun, Auburn, Truckee, Reno and Elko, for instance, points intermediate to San Francisco from the east,

shall have at least the benefit of the commodity rates extended from the Missouri River to Sacramento and San Francisco, and shall pay no more than seven (7) per cent. above the Chicago-coast terminal rates, and corresponding increases of fifteen (15) and twenty-five (25) per cent., respectively, from Pittsburg and New York territories.

Some of the petitions under the fourth section which have been considered are made by carriers reaching California terminals through the southern gateways, southern Nevada and Arizona. These applications are also denied in so far
370 as they involve the imposition of higher rates upon intermediate points than are applied on commodities from the Missouri River to Los Angeles, San Francisco or other coast terminals. To all such intermediate points [Ashfork, Maricopa, San Bernardino, Bakersfield, Fresno and Ventura, for instance] terminal rates shall not be exceeded as from Missouri River points, with the same proportionate advances east of the Missouri River as heretofore specified.

An order will be made to this effect, allowing to the carriers until October 15 in which to file tariffs in accordance with said order—the same to go into effect upon three days' notice.

No order need be entered in either the Reno or Phoenix cases, so-called, at this time.

371

APPENDIX A.

Class rates to San Francisco, Cal., from eastern points named.

(Rates in cents per 100 pounds.)

July 18, 1887.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
New York	3.00	2.50	2.00	1.75	1.50	1.40	1.30	1.20	1.10	1.00	1.00	1.00	1.00	1.00
Pittsburg	2.70	2.25	1.80	1.58	1.35	1.26	1.17	1.08	.99	.90	.90	.90	.90	.90
Detroit	2.55	2.13	1.70	1.49	1.28	1.19	1.11	1.02	.94	.85	.85	.85	.85	.85
Chicago	2.40	2.00	1.60	1.40	1.20	1.12	1.04	.96	.88	.80	.80	.80	.80	.78
Mississippi River	2.30	1.92	1.54	1.34	1.15	1.08	1.00	.92	.84	.77	.77	.77	.77	.75
Missouri River	2.10	1.75	1.40	1.23	1.05	.98	.91	.84	.77	.70	.70	.70	.70	.68
Jan. 16, 1888.														
New York	4.00	3.20	2.50	2.20	1.80	1.60	1.40	1.30	1.20	1.10	1.10	1.10	1.10	1.10
Pittsburg	3.60	2.88	2.25	1.98	1.62	1.44	1.26	1.17	1.08	.99	.99	.99	.99	.99
Detroit	3.40	2.72	2.13	1.87	1.53	1.36	1.19	1.11	1.02	.94	.94	.94	.94	.94
Chicago	3.25	2.55	2.00	1.75	1.45	1.30	1.12	1.05	.96	.88	.88	.88	.88	.88
Mississippi River	3.12	2.45	1.90	1.68	1.40	1.25	1.08	1.00	.92	.85	.85	.85	.85	.85
Missouri River	2.80	2.20	1.75	1.55	1.25	1.15	1.00	.95	.85	.80	.80	.80	.80	.80

September 1, 1888. No class rates Atlantic seaboard territory.

	Class—									
	1	2	3	4	5	A	B	C	D	E
Sept. 1, 1888.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Buffalo-Pittsburg[1]	4.00	3.50	2.80	2.20	1.95	1.95	1.75	1.40	1.25	1.15
Detroit, Toledo	3.95	3.45	2.75	2.15	1.90	1.95	1.75	1.40	1.25	1.15
Chicago	3.90	3.40	2.70	2.10	1.85	1.90	1.70	1.35	1.20	1.10
Mississippi River	3.70	3.20	2.60	2.05	1.80	1.82½	1.62½	1.30	1.15	1.05
Missouri River	3.50	3.00	2.50	2.00	1.75	1.75	1.55	1.25	1.10	1.00
Jan. 1, 1889.										
Rate from New York added	4.20	3.70	2.95	2.30	2.00	2.00	1.80	1.45	1.30	1.20

[1] And points east thereof and west of Atlantic seaboard.

January 1, 1889. Mississippi River classes A and B changed to 1.82 and 1.63 cents.

372 *Class rates to San Francisco, Cal., from eastern points named*—Continued.

(Rates in cents per 100 pounds.)

	Class—									
	1	2	3	4	5	A	B	C	D	E
Apr. 11, 1893.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
New York	3.70	3.30	2.65	2.10	1.85	1.85	1.65	1.30	1.15	1.05
Pittsburg	3.50	3.10	2.50	2.00	1.80	1.80	1.60	1.25	1.10	1.00
Detroit	3.45	3.05	2.45	1.95	1.75	1.80	1.60	1.25	1.10	1.00
Chicago	3.40	3.00	2.40	1.90	1.70	1.75	1.55	1.20	1.05	.95
Mississippi River	3.20	2.80	2.30	1.85	1.65	1.67	1.48	1.15	1.00	.90
Missouri River	3.00	2.60	2.20	1.80	1.60	1.60	1.40	1.10	.95	.85

Effective May 11, 1893. Through rates did not apply from territories east of Chicago.

	Class—									
	1	2	3	4	5	A	B	C	D	E
July 16, 1894.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Chicago	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	0.95
Mississippi River	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.90
Missouri River	2.40	2.15	2.00	1.70	1.60	1.60	1.10	1.00	.95	.85
June 24, 1897.										
New York	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95
Pittsburg	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95
Detroit	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95

Chicago, Mississippi River, and Missouri River as above.

	Class—									
	1	2	3	4	5	A	B	C	D	E
June 25, 1898.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
New York	3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	0.95
Pittsburg	3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	.95
Detroit	3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	.95
Chicago	3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	.95
Mississippi River	3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	.90
Missouri River	3.00	2.60	2.20	1.90	1.60	1.60	1.25	1.00	.95	.85

January 18, 1904; All classes read the same as from New York.

January 1, 1909; Fifth, A, B, C, D, and E classes were cut out from groups B and C (New York and Boston territories); balance of rates remained the same.

373

APPENDIX B.

Statement showing certain traffic statistics for the years June 30, 1910 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Average mileage operated during year.		Operating revenues per mile of road.		Net operating revenue per mile of road.		Number of tons carried one mile per mile of road.		Number of passengers carried one mile per mile of road.	
	1910	1901	1910	1901	1910	1901	1910	1901	1910	1901
	Miles.	*Miles.*					*Tons.*	*Tons.*		
The Atchison, Topeka & Santa Fe Ry. Co	7,459.03	*6,650.71	$11,660	*$7,117	$4,159	*$2,950	757,977	*513,589	141,351	*69,166
The Atchison, Topeka & Santa Fe Ry. Co.	.....	4,815.09	.....	7,341	.....	3,204	.....	555,076	.....	67,741
The San Francisco & San Joaquin Valley Ry. Co.[1]	.....	372.57	.....	4,849	.....	850	.....	192,800	.....	63,045
The Santa Fe Pacific R. R. Co.[2]	.....	887.99	.....	7,972	.....	2,905	.....	640,459	.....	83,939
Southern California Ry. Co.[3]	.....	487.37	.....	6,152	.....	2,591	.....	178,346	.....	68,841
The California Eastern Ry. Co.[4]	.....	29.44	.....	732	.....	224	.....	3,517	.....	2,441
Randsburg Ry. Co.[4]	.....	29.00	.....	1,541	.....	736	.....	13,439	.....	5,286
Arizona & Utah Ry. Co.[5]	.....	29.25	.....	1,048	.....	287	.....	(6)	.....	(6)

* This item, based on returns for 1901 made by seven roads indicated, is inserted for substantial comparison with corresponding item for 1910 shown for the Atchison, Topeka & Santa Fe Ry. Co.

[1] Deeded to Atchison, Topeka & Santa Fe Ry. Co., April 1, 1901, but for convenience the operations of the property were separately reported for the entire year ended June 30, 1901.

[2] Deeded to Atchison, Topeka & Santa Fe Ry. Co., July 1, 1903.

[3] Deeded to and merged in Atchison, Topeka & Santa Fe Ry. Co., January 31, 1906.

[4] Shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

[5] Reorganized as Western Arizona Ry. Co., December 31, 1905; shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

[6] Data not reported.

Statement of gross and net earnings for years ending June 30, 1910 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Operating revenues.		Net operating revenue.	
	1910	1901	1910	1901
The Atchison, Topeka & Santa Fe Ry. Co.	$86,971,313	*$47,330,728	$31,025,848	*$19,622,592
The Atchison, Topeka & Santa Fe Ry. Co.	.....	35,349,805	.....	15,427,074
The San Francisco & San Joaquin Valley Ry. Co.[1]	.....	1,806,534	.....	316,785
The Santa Fe Pacific R. R. Co.[2]	.....	7,078,990	.....	2,579,775
Southern California Ry. Co.[3]	.....	2,998,496	.....	1,262,639
The California Eastern Ry. Co.[4]	.....	21,544	.....	6,591
Randsburg Ry. Co.[4]	.....	44,698	.....	21,330
Arizona & Utah Ry. Co.[5]	.....	30,661	.....	8,398

* This item, based on returns for 1901 made by seven roads indicated, is inserted for substantial comparison with corresponding item for 1910 shown for The Atchison, Topeka & Santa Fe Ry. Co.

[1] Deeded to Atchison, Topeka & Santa Fe Ry. Co. April 1, 1901, but for convenience the operations of the property were separately reported for the entire year ended June 30, 1901.

[2] Deeded to Atchison, Topeka & Santa Fe Ry. Co. July 1, 1903.

[3] Deeded to and merged in Atchison, Topeka & Santa Fe Ry. Co. January 31, 1906.

[4] Shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

[5] Reorganized as Western Arizona Ry. Co. December 21, 1905; shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

21 I. C. C. Rep.

APPENDIX C.

Rates and Distances to Sacramento, Cal.

Distances:

	Miles.
Chicago to Sacramento	2,184
Mississippi River (Burlington) to Sacramento	1,983
Missouri River (Omaha) to Sacramento	1,693

Rates on commodities, carload, to Sacramento, Cal.

Commodities.	Chicago.		Mississippi River.		Missouri River	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
Agricultural implements, viz, reapers, mowers, headers, mower-knife grinders, harvesters, hay tedders, hayrakes and extra parts for same, straight or mixed carloads; minimum weight 24,000 pounds	$1.25	Cents. 1.1446	$1.20	Cents. 1.2102	$1.20	Cents. 1.4176
Hand implements, viz., forks, barley (wooden); forks, hay or manure; forks, spading; hoes; potato hooks; rakes (wooden or iron); scythes and snaths; grain cradles in packages; minimum weight 24,000 pounds	1.35	1.2362	1.30	1.3111	1.25	1.4766
Potato sorters, straight carload, or potato sorters and potato diggers in mixed carload; minimum weight, 24,000 pounds	1.35	1.2362	1.30	1.3111	1.30	1.5357
Shovels, spades and scoops, in packages; minimum weight, 24,000 pounds	1.35	1.2362	1.30	1.3111	1.25	1.4766
Ale, beer and porter, in wood or in glass, packed	1.00	.9157	1.00	1.0085	1.00	1.1813
Alum, crude or refined, in packages; minimum weight, 40,000 pounds	.75	.6868	.75	.7564	.75	.8860
Ammonia, sulphate, in packages; minimum weight, 60,000 pounds	.50	.4578	.50	.5295	.50	.5906
Arsenate of lead, in packages; minimum weight, 40,000 pounds	.85	.7783	.85	.8572	.85	1.004
Asbestos, n. o. s., asbestos roofing slate, asbestos building paper and felting; minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1813
Asphaltum in packages; minimum weight, 60,000 pounds	.55	.5036	.55	.5547	.55	.6497
Assayer's clay crucibles, mufflers and scorifers	1.00	.9157	1.00	1.0085	1.00	1.1813
Automobiles, passenger and freight, and extra parts; minimum weight, 12,000 pounds	3.00	2.7471	3.00	3.0255	3.00	3.5439
Babbitt metal; minimum weight, 40,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1813
Bags and bagging, burlap, gunny hemp or jute	.85	.7783	.85	.8572	.85	1.0041
Bags, cotton, in bales or trusses	1.25	1.1446	1.25	1.2607	1.25	1.4766
Bath tubs, seamless steel (enameled); minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Baking powder and baking powder compound, boxed	1.20	1.0989	1.20	1.2102	1.20	1.4176
Beans and peas, dried, split or whole, in sacks or barrels; minimum weight, 40,000 pounds	.85	.7783	.85	.8572	.85	1.0041
Belting, rubber, cotton or leather	1.20	1.0989	1.20	1.2102	1.20	1.4176
Bicycles (complete or stripped, with or without stripped parts), boxed or crated; minimum weight, 10,000 pounds	2.50	2.2893	2.50	2.5214	2.50	2.9532
Billiard tables, knocked down, including slates or marbles, cues, etc.; minimum weight, 24,000 pounds	1.45	1.3278	1.45	1.4624	1.45	1.7070
Books, n. o. s., boxed	1.40	1.2825	1.40	1.4120	1.40	1.6538
Books, blank, including school composition books, blank books, and tablet for school purposes in paper covers, boxed	1.25	1.1446	1.25	1.2607	1.25	1.4766
Bottles, glass, n. o. s., carboys; flasks, glass, common; in boxes, crates or casks	.85	.7783	.85	.8572	.75	.8860
Boxes, paper or pasteboard, n. o. s., nested, boxed, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Brass, butts, bolts, castings, faucets, n. o. s., hinges, moldings, nails, rivets, tacks, blanks, screws, corners for picture frames and door rails, boxed	1.50	1.3736	1.50	1.5128	1.50	1.7719
Broom corn; minimum weight, 16,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Buggies (not including baby buggies), carriages, hearses, sleighs, wagonettes and other light passenger vehicle, finished or unfinished; minimum weight, 12,000 pounds	2.50	2.2893	2.50	2.5214	2.50	2.9532
Burial cases, wooden (not metallic lined); minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719

Rates on commodities, carload, to Sacramento, Cal.—Continued.

Commodities	Chicago.		Mississippi River.		Missouri River.	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
		Cents.		*Cents.*		*Cents.*
Cans, tin (including tin boxes, tin lard cans, tin lard pails and milk cans), in packages or in bulk; minimum weight, 20,000 pounds	$0.85	0.7783	$0.85	0.8572	$0.85	1.0041
Carpets, n. o. s.; minimum weight, 24,000 pounds	1.85	1.6941	1.85	1.8658	1.85	2.1854
Cement, building, or paving, n. o. s., in packages; minimum weight, 40,000 pounds	.50	.4578	.50	.5295	.45	.5316
Cereals: Barley, corn (including kaffir corn but not including popcorn), rye, oats and speltz; minimum weight, 50,000 pounds	.60	.5494	.60	.6001	.55	.6497
Flour; minimum weight, 50,000 pounds	.80	.7326	.75	.7564	.75	.8860
China and majolica ware, not including ornaments, in boxes, barrels or casks, minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1813
Cider and vinegar (not acetic acid), in glass, earthenware, or tin, boxed, or in wood	.85	.7783	.85	.8572	.85	1.0041
Coffee (including cereal coffee), roasted or ground, in boxes, barrels, or drums	1.10	1.0073	1.10	1.1094	1.10	1.2994
Composition for roofing, in packages; minimum weight, 40,000 pounds	.75	.6868	.75	.7564	.75	.8860
Conduits, clay; minimum weight, 50,000 pounds	.50	.4578	.50	.5295	.50	.5906
Conduits (wooden), n. o. s.; minimum weight, 40,000 pounds	.85	.7783	.85	.8572	.85	1.0041
Crackers, matzos, matzos meal, cakes, fruit biscuit, pretzels, toast, and shredded wheat biscuit, in boxes or barrels, minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Drugs, medicines, and chemicals, nitrate of ammonia, medicinal oils, witch hazel, and flavoring extracts; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Earthenware, stoneware, and crockery, in bulk or in packages; minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1813
Earthenware, plumbers', viz., washbowls, water-closet bowls, cisterns and tanks and urinals, boxed or crated	2.00	1.8314	2.00	2.0170	2.00	2.3626
Engines, traction; minimum weight, 24,000 pounds	1.25	1.1446	1.20	1.2102	1.20	1.4176
Fish, dried and salted, smoked and pickled, n.o.s.	1.20	1.0989	1.20	1.2102	1.20	1.4176
Foods, animal; animal and poultry tonics and regulators; condiments, animal (for use in animal food); and dog biscuit; in packages	1.00	.9157	1.00	1.0085	1.00	1.1813
Glass, window, common, boxed	.90	.8241	.90	.9077	.90	1.0632
Glassware (except cut) n. o. s., and glass lamps, plain; fruit and jelly glasses and jars, n. o. s.; minimum weight, 24,000 pounds	1.20	1.0989	1.20	1.2102	1.20	1.4176
Glucose, in barrels	.75	.6868	.75	.7564	.75	.8860
Glue, in boxes, barrels, or kegs	.85	.7783	.85	.8572	.85	1.0041
Grindstones (and frames), mounted or unmounted	.80	.7326	.80	.8068	.80	.9450
Hames, wooden, in boxes, crates, or bundles	1.00	.9157	1.00	1.0085	1.00	1.1813
Hardware as follows:						
Picks and mattocks, with or without handles, boxed	1.25	1.1446	1.25	1.2607	1.25	1.4766
Chain, trace and hobble; minimum weight, 40,000 pounds	.85	.7783	.85	.8572	.85	1.0041
Peavies, cant-hooks, handles for same, pike poles, pickaroons, skidding tongs, timber carriers, and parts thereof	1.25	1.1446	1.25	1.2607	1.25	1.4766
Harness, n. o. s.; minimum weight, 20,000 pounds	2.00	1.8314	2.00	2.0170	2.00	2.3626
Hay and straw, baled and pressed; minimum weight, 20,000 pounds	.75	.6868	.75	.7564	.75	.8860
Hollow ware of cast iron only, plain or enameled, bake ovens, broilers, gem pans, griddles, kettles, pots, sauce pans, skillets, spiders, tea kettles	1.20	1.0989	1.20	1.2102	1.20	1.4176
Hose, rubber (with or without covering), in cases, crates, or bales	1.25	1.1446	1.25	1.2607	1.25	1.4766
Iron and steel articles:						
Angle bars, beams, braces, channels, columns, piling rods, tees, washers, weights	.80	.7326	.80	.8068	.80	.9450
Castings, n. o. s., plain as from the sand	.80	.7326	.80	.8068	.80	.9450
Pipe, n. o. s. (including riveted, lock bar, spiral or straight, seam); minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1813
Lanterns (not including magic, paper or toy lanterns), in boxes, barrels, casks, or crates; minimum weight, 20,000 pounds	1.20	1.0989	1.20	1.2102	1.20	1.4176
Lard and lard substitutes, n. o. s	1.25	1.1446	1.25	1.2607	1.25	1.4766
Lime (including hydrated lime), in barrels, boxes, bags, or in bulk; minimum weight, 40,000 pounds	.50	.4578	.50	.5295	.50	.5906

Commodities.	Chicago.		Mississippi River.		Missouri River	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
		Cents.		*Cents.*		*Cents.*
Lime, phosphate of, in barrels	$1.10	1.0073	$1.10	1.1094	$1.10	1.2994
Liquors: Brandy, New England rum, whisky, gin, and fruit juice	1.25	1.1446	1.25	1.2607	1.25	1.4766
Machinery, mining; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Milk, condensed, liquid, or dry, in tin or glass, packed in boxes or in wood; minimum weight, 40,000 pounds	.85	.7783	.85	.8572	.85	1.0041
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s., in boxes or kegs	.70	.6410	.70	.7060	.70	.8269
Nails, horse, in boxes	.90	.8241	.90	.9077	.90	1.0632
Nuts, edible, n. o. s. (not shelled), in packages; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Peanuts, shelled or not shelled, in packages; minimum weight, 24,000 pounds	1.30	1.1904	1.30	1.3111	1.30	1.5416
Nut kernels or nut meats, boxed; minimum weight, 24,000 pounds	2.20	2.0146	2.20	2.2188	2.20	2.5988
Oil cake and oil-cake meal; minimum weight, 40,000 pounds	.60	.5494	.60	.6051	.60	.7088
Oilcloth (floor), linoleum, wool grain flooring and cork carpet, boxed, crated, or wrapped	1.00	.9157	1.00	1.0085	1.00	1.1807
Oilcloth, n. o. s., boxed, crated, or wrapped	1.10	1.0073	1.10	1.1094	1.10	1.2994
Oils, petroleum and petroleum products, including compounded petroleum oils and greases (exclusive of sewing machine and cycle oil), classified fifth class under "petroleum and petroleum products" under heading of "oils" in western classification	.90	.8241	.90	.9077	.90	1.0632
Castor, cocoanut, corn, palm, rubber, rapeseed, lard, linseed, neats-foot, red, resin, or "M," and tallow, transil, and transformer oils, and paint oils	.90	.8241	.90	.9077	.90	1.0632
Cottonseed oil	.90	.8241	.90	.9077	.90	1.0632
Onions and onion sets, in packages	.75	.6868	.75	.7564	.75	.8859
Packing-house products, viz., bacon, hams, beef, pork, lard, and lard substitutes (n. o. s.), sweet pickled tongues, tripe, pigs' feet, sausage, and meats (canned or in glass); minimum weight, 26,000 pounds	1.65	1.5109	1.65	1.6641	1.60	1.8901
Same with meat, fresh, minimum weight, 26,000 pounds	2.00	1.8314	2.00	2.0170	2.00	2.3614
Paints in cans (Packed in boxes or barrels), or in barrels, casks, kegs, kits, boxes, or iron drums; minimum weight, 40,000 pounds	.95	.8695	.95	.9581	.95	1.1222
White or red lead or litharge, dry or in oil, in cans (packed in boxes or barrels), or in barrels, casks, kegs, kits, steel pails, or iron drums; minimum weight, 60,000 pounds	.85	.7783	.85	.8572	.85	1.0041
Paper, building, n. o. s.; roofing and felt; book, not surface-coated, n. o. s.; news; poster; wrapping, hardware or manila, tissue, straw, box board, and manila tag board	.75	.6868	.75	.7564	.75	.8859
Paper bags, plain or printed; minimum weight, 40,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1807
Paper, wrapping (printed); wrapping, n.o.s.; cloth-lined envelopes (in boxes); fly, ledger, writing (plain or ruled)	1.20	1.0989	1.20	1.2102	1.20	1.4176
Paper, writing (flat), plain or ruled, including manila writing, ledger linen, and bond papers, and paper tablets	1.00	.9157	1.00	1.0085	1.00	1.1807
Paper, news, in rolls	.75	.6868	.75	.7564	.75	.8859
Pickles, n. o. s., in glass, earthenware, or tin packages, boxed	1.00	.9157	1.00	1.0085	1.00	1.1807
Pipe, sewer (clay), and drain tile	.65	.5952	.65	.6556	.65	.7208
Plaster, building, n. o. s., in packages; minimum weight, 60,000 pounds	.55	.5037	.55	.5547	.55	.6497
Potash, chlorate of, in cans boxed, or in barrels or casks	1.00	.9157	1.00	1.0085	1.00	1.1807
Potatoes	.75	.6868	.75	.7564	.75	.8859
Preserves (including mincemeat, fruit butters, and jellies), in glass, earthenware, or tin packages, boxed	1.10	1.0073	1.10	1.1094	1.10	1.2994
Pulleys (axle, frame, traveling, and window sash) in boxes or barrels	1.10	1.0073	1.10	1.1094	1.10	1.2994
Pumps, force, steam, electric, or other power, n. o. s., combination brass and iron (parts thereof when boxed); minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Quicksilver flasks; minimum weight, 40,000 pounds	.80	.7326	.80	.8068	.80	.9456

Rates on commodities, carload, to Sacramento, Cal.—Continued.

Commodities.	Chicago.		Mississippi River.		Missouri River	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
Rice, broken rice, and brewers' rice, in packages, straight carloads; minimum weight, 40,000 pounds	$0.65	*Cents.* 0.5952	$0.60	*Cents.* 0.6051	$0.60	*Cnets.* 0.7088
Roofing, metal (asbestos-covered), in packages; minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1807
Rubber boots and shoes, including tennis shoes (canvas tops) and felt boots boxed; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Rubber clothing (not including mackintoshes or garments of similar character), rubber gloves and soft rubber hats; minimum weight, 24,000 pounds	1.75	1.6025	1.75	1.7650	1.75	2.0673
Rubber packing, straight carloads or mixed carloads of rubber packing and rubber belting	1.20	1.0989	1.20	1.2102	1.20	1.4176
Rubber tubing, in cases, crates, or bales; minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Sadirons, n. o. s. (including electric sadirons and gas, gasoline, charcoal, and alcohol burning sadirons), and sadiron handles and stands, in boxes or barrels; minimum weight, 24,000 pounds	1.60	1.4652	1.60	1.6136	1.60	1.8901
Saleratus and bicarbonate of soda and soda carbonating compound	1.20	1.0989	1.20	1.2102	1.20	1.4176
Salt; minimum weight, 40,000 pounds	.60	.5494	.60	.6061	.50	.5904
Saltpeter	.80	.7326	.80	.8068	.80	.9456
Sal-soda	.80	.7326	.80	.8068	.80	.9456
Sash, doors, and blinds; wooden door, window and screen frames; carpenters' moldings for door frames and for inside finishing	.85	.7783	.85	.8572	.85	1.0041
Saws, circular, mill, crosscut, and drag, on boards or boxed; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Scale and scale beams, n. o. s. (not including computing scales, gold weighing scales, nor assayers' nor apothecaries' scales) all fragile parts boxed or crated; minimum weight, 24,000 pounds	1.20	1.0989	1.20	1.2102	1.20	1.4176
Scrapers, road, road machine, grading plows, land graders and street graders and street rollers; minimum weight, 24,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Scrapers, drag	1.35	1.2362	1.35	1.3625	1.35	1.5948
Seeds, as follows:						
Alfalfa, beet, clover, grass, hemp, mustard, rape, bird, timothy, millet, and canary, broom-corn seed, also wheat, corn, pop corn, oats, peas and beans, flax, garden, sunflower, and sorghum	1.20	1.0989	1.10	1.1094	1.00	1.1807
Beet, in straight carloads	1.00	.9157	1.00	1.0085	1.00	1.1807
Sewing machines and component parts, in boxes or crates; minimum weight, 20,000 pounds	1.50	1.3736	1.50	1.5128	1.50	1.7719
Sheep dip, liquid	.65	.5952	.65	.6556	.65	.7208
Shingles, iron or metal, including tile roofing (galvanized iron)	.90	.8241	.90	.9077	.90	1.0632
Shot, in bags	.75	.6868	.75	.7564	.75	.8859
Sinks (and backs and drain boards for same), sink hoppers, cast-iron, plain, painted, galvanized, porcelain-lined, or granite-lined, minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Slate, roofing, n. o. s., minimum weight, 40,000 pounds	.80	.7326	.80	.8068	.80	.9456
Sledges, wedges, mauls, and track chisels, iron or steel, in boxes, barrels, or crates	.85	.7783	.85	.8572	.85	1.0041
Sleds, bob; minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Soap, soap chips, and soap powder, in packages, and scouring, washing, and sweeping compounds, n. o. s.; minimum weight, 40,000 pounds	.80	.7326	.80	.8068	.80	.9456
Soda ash (may be shipped in sacks), soda crystals, caustic soda, and hyposulphate; minimum weight, 40,000 pounds	.55	.5037	.55	.5547	.55	.6497
Soda fountain supplies, viz., syrups, fruits (crushed or whole), and fruit juices, when packed in wood, glass, or earthenware, boxed	1.50	1.3736	1.50	1.5128	1.50	1.7719
Spices, n. o. s.; minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Springs, automobile, carriage, wagon, and wagon bolster and wagon seat springs, n. o. s.	1.15	1.0531	1.15	1.1598	1.15	1.3998
Springs, wire, n. o. s.; minimum weight, 24,000 pounds	1.10	1.0073	1.10	1.1094	1.10	1.2994
Stamped ware, agate or enameled, n. o. s., also granite ironware, n. o. s., in boxes, barrels, or crates; minimum weight, 22,000 pounds	1.20	1.0989	1.20	1.2102	1.20	1.4176
Starch (including cornstarch) and dextrine	1.00	.9157	1.00	1.0085	1.00	1.1807

Commodities.	Chicago.		Mississippi River.		Missouri River.	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
		Cents.		*Cents.*		*Cents.*
Staves and heading, rough or finished, and hoops, also wine tanks (k. d.); minimum weight, 40,000 pounds	$0.85	0.7783	$0.85	0.8572	$0.85	1.0041
Stoves (cast iron), cooking, heating; minimum weight, 24,000 pounds	1.30	1.1904	1.30	1.3111	1.30	1.5416
Stovepipe (including stovepipe iron cut in shape nested), stovepipe elbows, tiles, and thimbles; minimum weight, 20,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Sulphur, in packages; minimum weight, 40,000 pounds	.75	.6868	.75	.7564	.75	.8859
Sweat and collar pads and harness pads (not leather) boxed or in bales; minimum weight, 20,000	1.25	1.1446	1.25	1.2607	1.25	1.4766
Syrup (corn, glucose, malt, maple, and rock candy) and molasses	.75	.6868	.75	.7564	.75	.8859
Syrup, n. o. s.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Tapioca and tapioca flour, in packages; minimum weight, 40,000 pounds	.90	.8241	.90	.9077	.90	1.0632
Tea, boxed; minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Terra cotta, building	.75	.6868	.75	.7564	.75	.8859
Tinware, n. o. s.; minimum weight, 22,000 pounds	1.20	1.0989	1.20	1.2102	1.20	1.4176
Tubs, stationary wash, cast iron; minimum weight, 24,000 pounds	1.40	1.2820	1.40	1.4120	1.40	1.6538
Turpentine, spirits of	1.25	1.1446	1.25	1.2607	1.25	1.4766
Twine and cordage, viz., cotton, flax, hemp, jute, fleece, sail, spring, sisal, manila and cotton seine twine and cordage	.95	.8695	.95	.9581	.95	1.1222
Varnish, in barrels, or in cans, boxed	.95	.8695	.95	.9581	.95	1.1222
Wagons, farm, and common dump carts, without springs; minimum weight, 24,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766
Wheelbarrows (k. d.), wheelbarrow wheels and barrel carts (k. d.); minimum weight, 24,000 pounds	1.00	.9157	1.00	1.0085	1.00	1.1807
Windmills and parts of same, including tanks and towers; minimum weight, 24,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Wire fencing in rolls and coarse wire netting for fencing	.80	.7326	.80	.8068	.80	.9456
Wire rope and cable	1.10	1.0073	1.10	1.1094	1.10	1.2994
Woodenware; minimum weight, 16,000 pounds.	1.35	1.2362	1.35	1.3625	1.35	1.5948
Zinc, sheet, in casks or boxes; minimum weight, weight, 40,000 pounds	1.25	1.1446	1.25	1.2607	1.25	1.4766

APPENDIX D.

(From brief of railroad commission of Nevada.)

COMPLAINANT'S EXHIBIT No. 47.—*Showing shipments moving to Reno from eastern territory via Ogden gateway in calendar year 1908, showing point of origin, total receipts under present rates, receipts under rates proposed, receipts of Southern Pacific Company under present rates, and receipts of Southern Pacific Company under rates proposed; statement also shows receipts per ton per mile on total movement under present rates and receipts per ton per mile under rates proposed, receipts per ton per mile of Southern Pacific Company under present rates and receipts per ton per mile of Southern Pacific Company under proposed rates.*

(Groups, classification, tonnage, and revenue, including Southern Pacific Company's proportion, taken from the waybills in Reno freight office of the Southern Pacific Company by the Railroad Commission of Nevada.)

1	Weight in tons			5	6	7	8	9	10	11	12
Originating in Group—	2 C. L.	3 L. C. L.	4 Total.	Total revenue under present rates.	Total revenue under proposed or terminal rates.	Revenue of Southern Pacific Company under present rates.	Revenue of Southern Pacific Company under proposed or terminal rates.	Receipts per ton per mile under present rates on total haul.	Receipts per ton per mile under proposed or terminal rates on total haul.	Receipts per ton per mile Ogden to Reno under present rates.	Receipts per ton per mile Ogden to Reno under proposed or terminal rates.
								Cents.	*Cents.*	*Cents.*	*Cents.*
B	183	70	253	$10,634.21	$ 6,619.86	$ 5,980.18	$ 1,965.83	1.3107	.8001	4.2880	1.4100
C	2,030	685	2,715	102,003.44	66,770.65	58,135.15	22,902.36	1.4450	.9459	3.8932	1.5330
D	2,207	507	2,714	89,621.20	65,255.18	50,029.20	25,663.18	1.5726	1.1452	3.3514	1.7193
E	1,970	173	2,143	62,043.16	49,425.39	34,041.32	21,423.55	1.8094	1.4416	2.8880	1.8175
F	1,891	89	1,980	68,158.73	61,093.44	36,287.81	29,222.52	2.2949	2.0572	3.3222	2.2949
G	1,666	11	1,677	26,359.23	25,577.55	13,566.74	12,785.09	1.2091	1.1731	1.4710	1.3862
H, I, J	619	44	663	16,842.70	10,442.11	11,467.56	5,066.97	2.3082	1.4311	3.1431	1.3888
Wheat, salt, barley, cement, and coal from Idaho, Utah, and Wyoming	.....	.....	11,177	78,679.92	78,679.92	59,008.44	59,008.44	.7825	.7825	.9603	.9603
Total	.....	.....	23,322	454,343.69	363,865.23	268,516.40	178,037.94	1.3800	1.1156	2.0933	1.3879

Average cost per ton per mile for operating expenses (1908) Ogden to Reno, 4.88 mills.
Average cost per ton per mile for operating expenses (1907) on entire Central Pacific Railway, 7.05 mills.
Average receipts per ton per mile on Southern Pacific system, 1.21 cents.
Average revenue upon each ton Ogden to Reno under present rates, $11.51.
Average revenue upon each ton Ogden to Reno under proposed or Pacific coast terminal rates, $7.63.

Referring to this exhibit, attention may be directed to the fact that 56 per cent of the total tonnage (23,322) consisted of low-grade products, and were as follows:

	Tons.		Tons.
Coal	5,225	Oats	495
Wheat	4,334	Barley	338
Cement	1,242	Grits	200
Marble and stone	445	Lumber	69
Brick	103		
Salt	370	Total	13,101
Corn	278		

Out of the 13,101 tons of low-grade products it will be noted by reference to the bottom column of Exhibit No. 47 that 11,177 tons of said products moved into Reno from Idaho, Utah, and Wyoming at rates which did not exceed Pacific coast terminal rates.

The foot note on bottom of Exhibit No. 47 shows the average receipts per ton-mile on the Southern Pacific for the year 1909 as 1.21 cents. In comparison therewith attention is directed to column No. 10, Exhibit No. 47, wherein is shown receipts per ton-mile covering movement of freight from each group territory, at Pacific coast terminal rates, with total average receipts of 1.1156 cents, or in other words, this would be the receipts accruing if the business moved through to San Francisco. Column 12 shows receipts per ton-mile covering actual movement of freight from group territories, at proposed or Pacific coast terminal rates to Reno, with a total average of 1.2879 cents or 1.58 mills in excess of the average receipts for the Southern Pacific system as a whole.

Of course, at Winnemucca and, in fact, all main-line points east of Reno to the Nevada-Utah state line the excess receipt per ton-mile over the average for the system as a whole will be correspondingly greater as we move eastward, or rather as the haul from Ogden westward is shortened. On the basis of this comparative revenue showing alone it is conclusive that the application of

Pacific coast terminal rates to Southern Pacific main-line points in Nevada would be more than compensatory.

COST OF OPERATION BETWEEN OGDEN AND SPARKS.

Regarding the *cost of operation* between Ogden and Sparks based upon the total west-bound movement of freight for the 11 months ending November 30, 1908, furnished by Mr. T. F. Rowlands, assistant superintendent Southern Pacific Company at Sparks, Nev., upon request of the railroad commission of Nevada, and the *revenue per ton* accruing from Ogden to Reno (Reno being 3 miles west of Sparks), predicated upon the actual movement of 23,322 tons of west-bound freight received at Reno from all eastern territory for the calendar year 1908, it may be stated that a detailed showing is made in complainant's Exhibits No. 37, 44, 47, and 48.

Before contrasting the revenue to the cost of the service, we shall, for convenience, set forth herein recapitulated portions of said exhibits.

Total gross tonnage moved Ogden to Sparks, distance 538½ miles; January 1, to December 1, 1908, 1,816,346 tons.

This tonnage was moved in 51,845 cars and 1,279 trains.

Average weight of car used in finding net weight of contents, 18 tons.

Gross weight of cars, 933,210 pounds.

Net weight of freight, 883,237 pounds.

For the year 1907 on the Central Pacific Railway, Mr. Seger shows that 79.3 per cent was commercial and 20.7 per cent was company freight.

Applying the same proportion for 1908 we find the commercial freight represented in the above tonnage is 690,407 tons.

Dividing 1,279 trains into the above commerical freight tonnage, we have an average of 539.9 tons per train.

The average cost of operation per freight-train-mile on the Central Pacific Railway in 1907 (as shown by Seger) was $2.36.

The average cost of operation per train-mile on the

Central Pacific in 1907 (as shown by annual report) was $1.77, while the average cost in 1908 is shown to be $1.989, an increase in cost of 12.36 per cent.

Applying the 12.36 per cent increase to the $2.36, and we find the average cost of operation per freight train-mile for the year 1908 is $2.65.

Applying $2.65 cost per freight-train-mile to the number of miles, Ogden to Sparks, 538.5, and we find the average cost of operation (all expenses) moving one train from Ogden to Sparks is $1,427.02.

Dividing 539.9 tons per train into $1,427.02, the cost per train, and we find the average cost of operation per ton of commercial freight from Ogden to Sparks is $2.64, or if further divided by 538.5, the mileage, 4.88 mills per ton-mile.

[NOTE.—If the company freight was included the average per train would be 690 tons instead of 539.9, and divided into $1,427.02, the cost per train, we find the average cost of operation per ton from Ogden to Sparks is $2.08, or if divided by 538.5, the mileage, 3.85 mills per ton-mile.]

The Southern Pacific Company received as its proportion of the rates covering the movement of 23,322 tons of commercial freight from all eastern territory to Reno in 1908 an average revenue of $11.51 per ton, or 4.3 times the average cost of service from Ogden to Reno.

If rates no higher than Pacific coast terminal rates had been in effect to Nevada main-line points, and covered the movement of the said 23,322 tons of commercial freight from Ogden to Reno in 1908, the average revenue accruing to the Southern Pacific Company would have been $7.63 or 2.9 times the average cost of service.

Briefly, the foregoing deductions indicate the scientific and conclusive manner in which the earnings and expenses covering west-bound business have been segregated and assigned to the Central Pacific mileage from Ogden to Sparks.

COST AND REVENUE.

Applying the average operating expenses of 4.88 mills per ton per mile to Nevada main-line points according to respective distances of west-bound haul from Ogden, and

contrasting therewith $11.51 and $7.63, the average revenue heretofore shown, the results obtaining are interesting and instructive.

The following tables express the matter forcefully:

TABLE No. 1.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.88 mills per ton per mile.	Average revenue per ton on basis of actual amount received from westbound business at Reno, 1908.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	Miles.				
Tecoma, Nevada-Utah state line	113.5	$0.53	$11.51	4.6	95.4
Cobre	137.5	.67	11.51	6.0	94.0
Wells	174.8	.85	11.51	7.5	92.5
Elko	226.3	1.10	11.51	9.5	90.5
Palisade	256.6	1.23	11.51	10.7	89.3
Battle Mountain	306.5	1.49	11.51	13.0	87.0
Golconda	348.3	1.69	11.51	14.7	85.3
Winnemucca	365.0	1.78	11.51	16.0	84.0
Imlay	398.0	1.94	11.51	17.0	83.0
Lovelock	438.0	2.13	11.51	18.5	81.5
Hazen	494.2	2.41	11.51	21.0	79.0
Reno	540.0	2.64	11.51	23.0	77.0

NOTE.—It will be observed that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6. They indicate conclusively that the old rates are grossly exorbitant.

382

TABLE No. 2.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.88 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue	Percentage of net revenue from operation.
1	2	3	4	5	6
	Miles.				
Tecoma, Nevada-Utah state line	113.5	$0.53	$7.63	7.0	93.0
Cobre	137.5	.67	7.63	9.0	91.0
Wells	174.8	.85	7.63	11.0	89.0
Elko	226.3	1.10	7.63	14.5	85.5
Palisade	256.6	1.23	7.63	16.0	84.0
Battle Mountain	306.5	1.49	7.63	19.0	81.0
Golconda	348.3	1.69	7.63	22.0	78.0
Winnemucca	365.0	1.78	7.63	23.0	77.0
Imlay	398.0	1.94	7.63	25.5	74.5
Lovelock	438.0	2.13	7.63	28.0	72.0
Hazen	494.2	2.41	7.63	31.5	68.5
Reno	540.0	2.64	7.63	34.5	65.5

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6 and they indicate that Pacific coast terminal rates applied at Nevada main-line points are unreasonably high and more than a fair compensation.

The following table is made on the basis of 3.85 mills per ton per mile, the average cost of operation covering the movement of all freight business (company and commercial) from Ogden to Sparks in 1908. Cost of operation per ton is shown from Ogden to Nevada main-line points, after which the cost is compared with $7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE No. 3.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 3.85 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	Miles.				
Tecoma, Nevada-Utah state line	113.5	$0.45	$7.63	6.0	94.0
Cobre	137.5	.53	7.63	7.0	93.0
Wells	174.8	.67	7.63	9.0	91.0
Elko	226.3	.87	7.63	11.5	88.5
Palisade	256.6	.975	7.63	13.0	87.0
Battle Mountain	306.5	1.18	7.63	15.0	85.0
Golconda	348.3	1.34	7.63	17.5	82.5
Winnemucca	365.0	1.40	7.63	18.5	81.5
Imlay	398.0	1.54	7.63	20.0	80.0
Lovelock	438.0	1.68	7.63	22.0	78.0
Hazen	494.2	1.90	7.63	25.0	75.0
Reno	540.0	2.08	7.63	27.0	73.0

NOTE.—The above table shows that the percentage of operating expenses to operating revenue for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6, and the result is clear at a glance.

383 The following table is made on the basis of 7 mills per ton per mile, the average cost of operation (all expenses) of the commercial freight business of the Southern Pacific system as a whole. Included therein is the extraordinarily expensive operation of the freight-train service over the Sierra Nevada, Tehachapi, and Siskiyou mountains, numerous branch lines, local freight-train service, and the expenses incidental to the handling of company freight, the tonnage of which did not enter into the calculation in finding the average commercial ton-mile cost.

Cost of operation per ton is shown from Ogden to Nevada main-line points according to respective distances, after which the costs are contrasted to $7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE NO. 4.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 7 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	Miles.				
Tecoma, Nevada-Utah state line	113.5	$0.79	$7.63	10.5	89.5
Cobre	137.5	.96	7.63	12.5	87.5
Wells	174.8	1.22	7.63	16.0	84.0
Elko	226.3	1.58	7.63	21.0	79.0
Palisade	256.6	1.79	7.63	23.5	76.5
Battle Mountain	306.5	2.15	7.63	28.0	72.0
Golconda	348.3	2.44	7.63	32.0	68.0
Winnemucca	365.0	2.58	7.63	34.0	66.0
Imlay	398.0	2.79	7.63	38.0	62.0
Lovelock	438.0	3.06	7.63	40.0	60.0
Hazen	494.2	3.46	7.63	45.0	55.0
Reno	540.0	3.78	7.63	50.0	50.0

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6 and they prove conclusively that Pacific coast terminal rates applied as the maximum at Nevada main-line points are unreasonably high and more than a fair compensation.

384 The following table is made on the assumption that the cost of operation of west-bound transcontinental freight, moving in maximum trainload lots does not exceed 2.26 mills per ton per mile from Ogden to Reno, 4.52 mills from Reno to Sacramento, and 2.50 mills from Sacramento to San Francisco, or an average of 2.74 mills from Ogden to San Francisco.

Cost of operation per ton is shown from Ogden to various important main line points, after which the costs are contrasted to $7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE No. 5.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 2.26 mills to Reno 4.52 mills to Sacramento, 2.50 mills to San Francisco.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	Miles.				
Elko	226.3	$0.51	$7.63	6.7	93.3
Winnemucca	365.0	.82	7.63	11.0	89.0
Hazen	494.2	1.11	7.63	14.5	85.5
Reno	540.0	1.22	7.63	16.0	84.0
Sacramento	696.0	1.92	7.63	25.0	75.0
San Francisco	786.0	2.15	7.63	28.0	72.0

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6 and they indicate conclusively that transcontinental rates to Pacific coast terminals are certainly more than a mere trifle above "cost of transportation," and that in fact, they are, considering "all expenses," highly compensatory.

The foregoing tables prove conclusively the merits of our earnest contention for the absolute enforcement of the fourth section.

PROPOSED RATES FULLY COMPENSATORY.

The relationship of earnings to expenses is set forth so clearly and simply that only a superficial study of the tables should be necessary to convince even the most skeptical that the application of higher than Pacific coast terminal rates, on west-bound transcontinental business to all intermountain transcontinental-line points, is nothing less than clumsily devised scheme "to get the money," irrespective of the value of the service, and without regard to the unreasonable burden cast upon the people by these discriminatory and unlawful rates.

To contend that such a scheme of rate making as this should be maintained in the interest, mainly, of the railroads and a few jobbers immediately on the Pacific coast line is monstrous and entirely beyond any conception of justice and fair dealing on the part of the railroads reaching the Pacific coast in discharging their duty as common carriers to the people of the intermountain territory.

OPINION No. 1627.

BEFORE THE

INTERSTATE COMMERCE COMMISSION.

APPLICATIONS FOR RELIEF UNDER THE FOURTH SECTION: Nos. 205, 342, 343, 344, 349, 350, and 352.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 2662.

COMMERCIAL CLUB, TRAFFIC BUREAU, OF SALT LAKE CITY, UTAH,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Decided June 22, 1911.

SUPPLEMENTAL REPORT OF THE COMMISSION.

400 APPLICATIONS FOR RELIEF UNDER THE FOURTH SECTION: NOS. 205, 342, 343, 344, 349, 350, and 352.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 2662.

COMMERCIAL CLUB, TRAFFIC BUREAU, OF SALT LAKE CITY, UTAH,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted March 22, 1911. Decided June 22, 1911.

1. The financial statements prepared by the carriers and the Commission for the purpose of ascertaining the loss in revenue which would result from applying rates found to be reasonable by the Commission in its opinion of June 7, 1910, disclose nothing which changes the opinion as to the reasonableness of the rates then suggested. So far as that element is concerned there is no reason why those rates should not now be established.

2. Since the promulgation of that opinion the fourth section has been amended. Inasmuch as the gravamen of the complaint of the City of Spokane and to some extent of Salt Lake City was directed against the violation of the fourth section, it is necessary to again inquire whether, under the amended fourth section, the relief to which those communities are entitled can now be granted.

3. The complainants contend that the proviso in the amended section, permitting the Commission to authorize in particular instances the charging of a higher rate at the intermediate point, is void as a delegation of legislative authority; that it should be rejected and the section applied by the Commission as though it were an absolute long-and-short-haul prohibition. This contention is not sustained.

4. The defendants contend that the only effect of the amendment is to cast upon the carriers the burden of assuming the initiative in justifying the higher rate at the intermediate point. If upon investigation it is found that competition exists at the more distant point and not at the intermediate point, then the Commission must, without further inquiry, grant the relief asked for; if no such competition exists it must deny the application. This contention is not sustained.

401 5. In amending the fourth section by striking out the words "similar circumstances and conditions" Congress intended to invest the Commission with authority not only to determine whether a wrong results from the disregard of the long-and-short-haul provision, but also to correct that wrong if found to exist.

6. In determining whether the carrier shall be permitted to make the higher intermediate charge the Commission can not act arbitrarily but must apply the principles which control it in the administration of the other portions of the act. It must inquire whether the maintenance of the higher intermediate rate will result in unreasonable charges or unjust discriminations. If so the permission must be refused; otherwise it must be granted.

7. The Commission may prescribe in any way that is definite and certain the extent to which the intermediate rate may

exceed the long distance rate in cases where this is necessary to prevent unreasonable rates or unjust discriminations.

8. In dealing with the situation presented by these cases and the applications of the carriers the United States has been divided into five zones. From zone 1 west-bound rates must not be higher at any intermediate point than to a more distant point. From zone 2 the rates to intermediate points may exceed those to more distant points by not over 7 per cent; from zone 3 by not over 15 per cent, and from zone 4 by not over 25 per cent. No opinion is expressed as to zone 5.

H. M. Stephens for city of Spokane and others.

S. H. Babcock and *S. H. Love* for Commercial Club, Traffic Bureau, of Salt Lake City.

Hale Holden and *E. C. Lindley* for Great Northern Railway Company and Chicago, Burlington & Quincy Railroad Company.

N. H. Loomis, P. L. Williams, C. W. Durbrow, W. W. Cotton, G. W. Luce, H. M. Garwood, J. C. Stubbs and *H. A. Scandrett* for Union Pacific Railroad Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Southern Pacific Company.

Charles Donnelly and *J. M. Hannaford* for Northern Pacific Railway Company.

Edward Chambers, Gardiner Lathrop and *G. T. Nicholson* for Atchison, Topeka & Santa Fe Railway Company.

James C. Jeffery for Missouri Pacific Railway Company and Denver & Rio Grande Railroad Company.

H. C. Barlow for Chicago Association of Commerce.

Louis D. Brandeis, D. O. Ives and *S. C. Mead* for Mer-

chants' Association of New York, Boston Chamber of Commerce, and 16 other eastern commercial organizations.

Edward M. Cousin for The Dalles, Centralia & Chehalis, and Willamette Valley Railway Exchange.

R. H. Countiss for Transcontinental Freight Bureau.

P. W. Coyle for Business Men's League of St. Louis.

W. C. Hawley for shippers in western Oregon.

N. B. Kelly for Philadelphia Chamber of Commerce.

E. J. McVann for Omaha Commercial Club.

J. N. Teal for Portland Chamber of Commerce, Seattle Chamber of Commerce and Tacoma Traffic Association.

James J. Wait for Chicago Association of Commerce.

E. E. Williamson for Shippers' Association of Cincinnati.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, *Commissioner:*

On June 7, 1910, the Commission published a report in each of the above cases, in which it found certain class and commodity rates to be reasonable. The class rates were established in No. 879, and are now in effect, but no order was at that time made with respect to the commodity rates in either case, or class rates in No. 2662.

The rates suggested by the Commission involved material reductions from those in effect, and the Commission itself found that the establishment of those rates to the complaining localities would require an extensive readjustment of other rates to various other localities. The defendants insisted that the resulting loss in revenue would be so great as to deprive them of a proper return upon their investment,

and that, therefore, this Commission should not and could not lawfully put them into effect.

The Commission had before it in making its findings figures which showed with substantial accuracy the losses which would result to the carriers at the points involved, but it had only a very general and unsatisfactory estimate as to what other loss in revenue would be entailed by changes at other points. For the purpose of obtaining more exact information upon this subject and to the end that no action of ours might be inadvisedly taken we deferred the making of an order.

In order to obtain an accurate notion of these revenue losses certain representative months were selected, and the rates suggested by the Commission were applied to the business actually moving during those months to the localities affected by the schedules of the Commission. Treating these months as fairly typical the annual loss upon traffic to these points was determined.

Carriers were also required to state the rates which in their opinion must be established at other points in consequence of the putting in of the rates of the Commission at the complaining localities, and did so. These rates were applied to the actual movement of traffic during the selected months, and the loss of revenue for an entire year thus determined.

We have before us, therefore, the figures showing with substantial accuracy the total loss which would result to the defendants if the rates suggested by the Commission were to be made effective, provided the movement of traffic con-
403 tinued the same, and we find nothing in these figures which would incline us to change our opinion as to the reasonableness of the suggested rates or deter us from putting those

rates into effect. The loss is substantially what the figures which were before the Commission when its decision was rendered had indicated, and was therefore in contemplation when the rates were found to be reasonable. So far as that element of the case is concerned, there is no reason why these rates in the two above cases should not now be ordered in.

The real gravamen of the complaint in No. 879 was directed towards the alleged discrimination against the city of Spokane, which resulted from the fact that the defendants charged from eastern points of origin to Seattle, Portland, and other Pacific coast terminals lower rates than were applied at Spokane, although the traffic moved through Spokane in reaching those points. While it was alleged that the rates were in and of themselves unreasonable and while this allegation has been sustained by the Commission, nevertheless the moving cause of the complaint was the violation of the fourth section, and to some extent this same question was involved in the Salt Lake case, No. 2662.

The defendants insisted that terminal rates were induced by water competition, that therefore the circumstances and conditions under which rates to Spokane were made differed from those obtaining at Seattle, and that for this reason the fourth section did not apply. The Commission found as a fact that there was water competition at Pacific coast terminals which influenced the rate from eastern territory, and held that in view of this fact the terminal competitive rate could not be used as a standard by which to measure the reasonableness of the intermediate rate to Spokane. It therefore decided that there was no violation of the third and fourth sections, and declined to make any order upon that ground. The opinion was expressed that under the decisions of the Supreme Court of the United States the duty of the Commis-

sion was simply to establish reasonable rates to Spokane, allowing the carriers to make such rates to the more distant competitive points as they might elect, so long as those rates were not less than the fair cost of the service and did not, therefore, impose a burden upon other kinds of traffic.

The Commission felt that, in view of the whole situation, rates to Spokane from eastern territory ought in justice to
404 depend to an extent, at least, upon those which the carriers made to the coast cities, and it considered the advisibility of attempting to dispose of the case upon that theory, but in view of the doubt as to its right to do so it adopted the plan of prescribing a schedule of rates to Spokane without reference to the coast.

In the opinion of June 7, 1910, 19 I. C. C. Rep., 162, at page 174, the Commission said:

> In fixing these rates we have proceeded upon the view that, under the present decisions of the Supreme Court of the United States, we could not use the rate to Seattle as a standard by which to measure that to Spokane. If this were otherwise, if we were free to take into account all the competitive conditions existing both east and west and to determine what, in the light of all these conditions, would be a just and reasonable relation between the rates of Seattle and Spokane, a somewhat different question would be presented.

On June 18, 1910, subsequent to the promulgation of the foregoing opinion, the fourth section was amended. The city of Spokane claims that the amended section now in express terms forbids the discrimination against which that locality has always protested. It seems proper to inquire, therefore, whether, under that section in its present form, this discrimination is forbidden or can, if found to exist, be corrected by an order of this Commission. In this view we caused the applications of carriers for leave to depart from the rule of

the fourth section in the making of these transcontinental tariffs to be assigned for hearing and argument at the same time with these and cognate cases. The questions presented under those applications have been elaborately discussed; additional testimony has been heard, and the whole matter is now before us for disposition. In disposing of it we have to inquire:

1. What is the duty and authority of the Commission under the present fourth section?

2. Can the Commission under that section make an order in one or both of these cases which will obviate the necessity of prescribing a schedule of reasonable rates?

Below is the fourth section as originally enacted:

> That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

No change was made in this section until June 18, 1910, when it was amended by striking out the words "under substantially similar circumstances and conditions." Certain additions were made to the section touching other matters, but

the above is the only change which bears upon the question before us.

405 The most satisfactory way of determining the effect of this amendment is by inquiring what meaning had been put upon the omitted phrase and what the practical effect of that phrase had been upon the operation of the section itself.

When the act to regulate commerce took effect, in 1887, there were thousands of instances in all parts of the country where the long and short haul provision of the fourth section was violated. That section provided, as does the amended section, that the Commission might allow carriers to deviate from this rule, and numerous applications were filed asking the Commission to exercise its authority in that respect in favor of the applicants. One of the first and most serious tasks which confronted the Commission when it entered upon its work was to dispose of these applications. The whole subject was exhaustively considered in *In re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep., 31, and as a result certain conclusions were reached and stated by the Commission.

It was held that where the circumstances and conditions were dissimilar within the meaning of the section the long-and-short-haul rule did not apply and that the carriers must determine for themselves in the first instance whether that dissimilarity existed. The matter might subsequently be brought to the attention of the Commission by complaint, but until complaint was made or until the Commission saw fit upon its own initiative to proceed carriers must assume the responsibility.

The Commission then proceeded to state what facts would create the necessary dissimilarity under that section, holding that water competition or competition with rail carriers not subject to the act to regulate commerce would do this, but

that while there might be some exceptions, as a rule competition between carriers which were subject to the act and market competition could not under the fourth section justify the lower rate at a more distant point.

Upon the promulgation of this opinion carriers in some sections brought themselves generally into conformity with the views of the Commission, while in other sections but little attention was paid either to the fourth section or to the interpretation placed upon that provision by the Commission. It was the claim of these carriers that if competition of any sort existed at the more distant point this created the necessary dissimilarity of circumstances and conditions and removed the case from the prohibition of the fourth section. The attitude of these carriers was tantamount to an entire disregard of the section itself.

Numerous complaints were lodged with the Commission against these violations of the fourth section, and in attempting to dispose of them it became evident that under the interpretation adopted in the *Louisville & Nashville case* the section would have little or no effective force. Finally, in *Georgia Railroad Commission* v. *Clyde Steamship Co.*, 5 I. C. C. Rep., 324, the Commission, after an exhaustive reexamination of the whole subject, reversed its previous decision in the *Louisville & Nashville case* to the effect that carriers must judge for themselves in the first instance whether the dissimilarity existed, holding that in all cases application must first be made to the Commission. Under this decision carriers could in no case depart from the rule of the fourth section without the permission of the Commission, and in determining whether that rule should be observed, only competition between water carriers and between carriers not subject to the act could be considered. All other forms of competition must be disregarded.

This subject finally reached the Supreme Court of the United States in what is known as the *Alabama Midland case*. —*I. C. C.* v. *Alabama Midland Ry. Co.*, 168 U. S., 144.

In the main the opinion of the court fully sustained the contentions of the carriers. It held that where there was a dissimilarity of circumstances and conditions the rule of the fourth section did not apply, and that it was for the carriers themselves to determine in the first instance whether that dissimilarity did exist. It also held that all forms of competition must be considered in determining whether circumstances and conditions were similar at the two points.

The Commission understood this decision to mean that if circumstances and conditions were different at the more distant point, that of itself removed the case from the inhibition of the fourth section and from the jurisdiction of the Commission under that section. The Commission might inquire whether the dissimilarity existed, and if it found that it did not, might require carriers to cease and desist from making the higher charge at the intermediate point, but if it found that the dissimilarity did exist it could go no further; it had no power to inquire whether the dissimilarity justified the discrimination. In its annual report to Congress for the year 1897, in commenting upon the effect of this decision, it said, at page 43:

> * * * That section [the fourth] enacts that the carriers shall not charge more for the short than for the long haul under substantially similar circumstances and conditions. If the circumstances and conditions are similar, the greater charge can not be made. If the circumstances and conditions are not similar, the section does not apply. The court holds that railway competition of controlling force makes the circumstances dissimilar. If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter.

We have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point.

The third section is still left, and under that section we may inquire whether under all the circumstances the rates as adjusted give an undue preference to the competitive point, but the fourth section is by this decision eliminated from the act.

407 While the effect of the *Alabama Midland case* in the actual application of the fourth section seemed to be exactly as stated above by the Commission, there is, nevertheless, some language in the opinion which leaves room for a different interpretation. For example, at page 167 of that opinion, the court said:

> In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the question of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

Certain of the inferior federal courts took a somewhat different view of the decision from that of the Commission, insisting that it was the duty of the Commission in cases arising under the fourth section to inquire, not merely whether circumstances and conditions differed at the longer-distant point, but whether, under all the circumstances, the discrimination was or was not justifiable.

Severens, district judge, speaking in reference to certain language of the Commission similar to the above, said:

> Now, I do not understand that such a conclusion follows from that decision. On the contrary, I suppose that when a violation of the long-and-short-haul provision is charged, competition is one of the elements which enter into the determination whether the conditions are similar, and if dissimilarity is found, then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of. The language of the act ought not to be tied up by such literal construction. If it were, then if it should be found that the dissimilarity of conditions is really in favor of the locality discriminated against, the provision would not apply—a result contrary to the manifest intent. In other words, my opinion is that the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made. *I. C. C.* v. *East Tennessee, V. & G. Ry Co.*, 85 Fed. Rep., 107, 118.

The circuit court of appeals, having the same case before it, held that the inquiry was not merely, are conditions dissimilar at the farther point, but that circumstances and conditions at both points should be considered. *E. T. V. & G. Ry. Co.* v. *I. C. C.*, 99 Fed. Rep., 52.

The Commission itself, somewhat reanimated by the dicta of these judges, adopted a similar view which it endeavored to apply in one or two instances. It held, for example, in
408 the *Danville case*, 8 I. C. C. Rep., 409, that competition did exist at Lynchburg, the more distant point, which did not exist at Danville, the intermediate point, and that therefore rates to Lynchburg might properly be somewhat lower than to Danville but that the difference ought not to be as great

as that enforced by the tariffs of the defendants, and it ordered the carriers to cease and desist from maintaining a greater discrimination against Danville than was found by its opinion to be proper.

Again, in *Board of Trade of the City of Hampton, Fla.*, v. *N., C. & St. L. Ry. Co.*, 8 I. C. C. Rep., 503, we held that rates to Palatka, the more distant point from certain points of origin, might properly be lower than to Hampton, the intermediate point, but that the Hampton rate should not exceed the rate to Palatka by the full amount of the local, and we ordered carriers to cease and desist from maintaining the adjustment then in effect.

Proceedings were begun before the Circuit Court to enforce the orders of the Commission in both these cases, but in each case it was held by the Circuit Court of Appeals that where dissimilarity of circumstances at the more distant point was shown, the Commission could only inquire as to whether the rate at the intermediate point was reasonable, and that the competitive rate at the more distant point could not be made the standard of the reasonable rate at the intermediate point. *I. C. C.* v. *N., C. & St. L. Ry. Co.*, 120 Fed. Rep., 934; *I. C. C.* v. *S. Ry. Co.*, 122 Fed. Rep., 800.

These cases were never brought to the attention of the Supreme Court, for the reason that that court had meantime apparently decided the question adversely to the contention of the Commission in *E. T., V. & G. Ry. Co.* v. *I. C. C.*, 181 U. S., 1.

The complainant in the proceeding before the Commission out of which that suit grew was the city of Chattanooga, and its complaint was that carriers leading through Chattanooga to Nashville made a lower rate from eastern points of origin to Nashville than to Chattanooga. The Commission had

found that there was no water competition which forced this lower rate, but that there was a competition of railways and of markets which forced the defendants to accept the Nashville rates, and that if compelled to observe the long-and-short-haul provision they must either reduce their rates at Chattanooga or retire from the Nashville business. The Commission had ordered the carriers to cease and desist from charging more to Chattanooga than to Nashville, and this order had been affirmed first by the circuit court and afterwards by the circuit court of appeals. *E. T., V. & G. Ry. Co.* v. *I. C. C., supra.*

The Supreme Court of the United States reversed all these findings and held that upon the admitted case competition did
409 exist at the more distant point which compelled the taking of the lower rate and, that this being so, circumstances and conditions were dissimilar and the fourth section not applicable. The following excerpt from the opinion clearly states the view of the court:

> Although the Interstate Commerce Commission found as a fact that the competition at Nashville, which forms the basis of the contention in this case, was of such a preponderating nature that the carriers must either continue to charge a lesser rate for a longer haul to Nashville than was asked for the shorter haul to Chattanooga, or to abandon all Nashville traffic, nevertheless they were forbidden by the act of February 4, 1887, c. 104, 23 Stat., 379, to make the lesser charge for the longer haul; but since that ruling of the Commission was made it has been settled by this court in *Louisville & Nashville Railroad Company* v. *Behlmer*, 175 U. S., 648, and other cases cited, that competition which is controlling on traffic and rates produces in and of itself the dissimilarity of circumstances and condition described in the statute, and that where this condition exists a carrier has a right of his own motion to take it into view in fixing rates to the competitive point; and it follows that the construction affixed by the Commission to the statute upon which its entire action in this case was predicated was wrong.

This decision of the Supreme Court fully confirmed the interpretation which this Commission had placed upon the *Alabama Midland case*. If circumstances and conditions at the more distant point were dissimilar, carriers might without restraint depart from the long-and-short-haul rule. This virtually repealed that section, for the reason that it is always possible to show in the interlacing network of railways in this country, and in view of the intricate commercial conditions, that circumstances are different at one point from another. To hold that carriers may, wherever the dissimilarity exists, meet that competition or decline to meet it, partially meet it here and fully meet it there, is to hold that they may without practical restraint discriminate between different localities.

The Commission was forced to and did dismiss complaint after complaint upon the ground that there was a substantial dissimilarity of conditions at the more distant point, without inquiring whether, in point of fact, under the circumstances, the discrimination against the intermediate point should have been permitted. That provision of the section authorizing the Commission to prescribe the instances in which carriers might depart from the rule of the section and the extent of that departure could be given no practical effect.

The history of the judicial interpretation of this section has been given with tedious and apparently unnecessary detail, in order that the effect of the words "similar circumstances and conditions" upon the actual application of the statute might be clearly apprehended. The fourth section was for practical purposes a nullity. For 20 years this Commission has made no order of consequence under that section which could be enforced, and this because of the existence of these words. Their presence has rendered futile the prohibition of the section and has made it impossible to give any effect to the pro-

viso which allowed the Commission to designate the instances in which the rule of the prohibition might be departed from.

In view of these facts what was probably the intention of Congress in removing that phrase from the statute? It is earnestly contended by the carriers that the only effect was to take from the railway the power of initiative. The carrier can no longer judge in the first instance whether it may disregard the rule of that section, but is compelled to submit that question to the Commission.

Counsel for the Great Northern and Northern Pacific insist that the sole duty of the Commission under the present statute is to determine whether competition exists at the more distant point. If it does, permission to depart from the rule of the section must of necessity be granted; if it does not exist, it must be denied.

To this view we cannot subscribe. The effect of the present section is certainly to require carriers to first obtain from the Commission leave to depart from the rule of that section, and that of itself is a most significant and important thing. There is certainly a wide difference between the situation formerly, when some complainant must attack the existing rate and make good by evidence his complaint, and now, when the railroad must assume the burden of its justification. It is a matter of consequence that every discrimination of this sort must be brought directly to the attention of the Commission and passed upon by that body, but we think that something beyond this was in the legislative mind.

The real difficulty before had not been that the existing relation of rates must be attacked by complaint. Many complainants were ready and anxious to initiate such proceedings, and many complainants did initiate such proceedings, only to be told that the Commission had no authority to grant relief,

even though it were of the opinion that such relief should be granted. It was the manifest intent of Congress not only to provide by the amendment of this section that carriers must become the advancing party in justifying this particular species of discrimination, but also to give to the Commission some effective power to deal with the case when presented. Had the only purpose of Congress been to shift the burden of proof it would have said so, as it did with respect to certain other rate conditions. If the only function of the Commission is to inquire whether competition exists at the more distant point the matter stands, for all practical purposes, exactly where it has stood from the first. Congress certainly meant to go further than this. It meant not merely to declare a wrong, but to provide a remedy.

This brings us to the further inquiry: What is the function and authority of the Commission under the fourth section as amended?

411 That section provides that no carrier shall charge more for the short than for the long haul unless upon application to the Commission permission to do so is granted by it. If this section were read by itself and were taken at its literal face meaning, the Commission would possess unrestricted power to grant or deny such application. It could permit in one case and refuse in another, according as its fancy might dictate.

So construed, the proviso would probably be void as a delegation of legislative authority. The making of rates is a legislative function. To say whether a carrier shall or shall not be allowed to charge more for the short than for the long haul is virtually the making of rates, and therefore an attribute of the legislature. To invest an administrative body like this Commission with that unrestricted and unguided authority would be to give it legislative power, which cannot be done

under our federal constitution. It is one thing to authorize such a body to administer the law in accordance with certain rules and standards prescribed by the legislature and an entirely different thing to turn over to it the exercise of the legislative discretion itself.

The statute of Minnesota provided that any railroad company desiring to increase its capital stock should apply to the railroad commission of that state, and that no increase should be made without the consent of that commission. The supreme court of Minnesota held that this statute was unconstitutional as a delegation of legislative authority. *State* v. *G. N. Ry. Co.*, 100 Minn., 445.

There would seem to be little difference between delegating, without restraint, to a railroad commission authority to determine whether the capital stock of a railway shall or shall not be increased and investing that commission with power to arbitrarily determine whether, in a particular case, the long-and-short-haul rule may be departed from. Of the two, the latter power would rather more clearly involve the exercise of legislative functions.

Counsel for the city of Spokane insists that this proviso is void; that it should be stricken from the section; and that the Commission should treat the section as though it contained no such proviso; in other words, that we should hold that the fourth section imposes an absolute long-and-short-haul rule and should enforce that rule against the carriers.

Where a proviso which is unconstitutional can be separated from the body of the statute the unconstitutional provision will be disregarded and the statute enforced as though it contained no such proviso; but where the proviso is so far an essential part of the statute that it is evident that the legislature would not have enacted the statute itself without the

proviso, then the entire statute falls if the proviso is held invalid. *Allen* v. *Louisiana*, 103 U. S., 80; *Poindexter* v. *Greenhow*, 114 U. S., 207; *Sprague* v. *Thompson*, 118 U. S., 90; *Pollock* v. *Farmers Loan & Trust Co.*, 158 U. S., 601.

412

It may well be claimed that the present case is of that character. To eliminate this proviso leaves the fourth section an absolute long-and-short-haul prohibition. At every point in this discussion Congress has steadfastly declined to adopt such a provision, and it hardly seems probable that the court would give such construction to this amended section as would produce exactly the result which Congress has uniformly declined to accept.

However, we find no occasion to pass upon that question. It is the rule that where a statute is susceptible of two interpretations, under one of which it is constitutional and under the other unconstitutional, that interpretation must be adopted which will save the validity of the act. This familiar rule was very recently applied by the Supreme Court of the United States in the *Commodities Clause case—United States* v. *Delaware & Hudson Co.*, 213 U. S., 366.

The rule must extend to a proviso as well as to the body of a statute, and if it is possible to put upon this amended section such a construction as will preserve the constitutionality of the entire section, that clearly should be done.

Another thing should be borne in mind in determining the purpose of Congress in amending the fourth section as it did. In the *Alabama Midland case, supra*, the Supreme Court said:

> Whether there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise in particular instances, are questions of fact depending on the matters proved in each case.

At that time the findings of this Commission upon questions of fact were only *prima facie* evidence of their correctness. The Commission then possessed no rate-making authority, and all the decisions which have been referred to touching the fourth section were made in that posture of the law.

By the Hepburn amendment the rate-making power was conferred to a certain extent upon this body. To-day our conclusions of fact in administering the first, third, and apparently the second section, are conclusive. *Illinois Central R. R. Co.* v. *I. C. C.*, 215 U. S., 452; *Delaware, Lackawanna & Western R. R. Co.* v. *I. C. C.*, 220 U. S., 235.

Bearing in mind the authority which the Commission now administers in prescribing a reasonable rate and in declaring and correcting an undue preference, it seems evident that the purpose of Congress was to commit to this body the duty of determining whether if the carrier was permitted to charge a higher rate at the intermediate point that would result in a violation of the provisions of the act. But in so doing the Commission cannot act arbitrarily. It must investigate each
413 case, and if after such investigation it is of the opinion that a departure from the rule of the fourth section would not result in unreasonable rates or undue discrimination it must permit that departure. If, upon the other hand, it is of the contrary opinion, it must refuse the permission. Such is the only possible contruction which can be put upon this section in connection with the entire act, and if any doubt as to the real purpose of Congress could exist, it must be effectively put at rest by an examination of the history of the passage of this measure.

Going back to the time when the original act to regulate commerce was enacted we find two distinct and sharply divergent ideas touching the fourth section. One party in Con-

gress favored an absolute prohibition, the other a qualified prohibition, insisting that there were instances where the rule of the section ought to be departed from. The latter view prevailed at that time, and Congress attempted by the phraseology employed to distinguish those instances where the rule ought not to apply from instances where it should. It is not profitable to refer to the debates themselves as an authority for the above statement, since that has been already done at great length by this Commission *In re Louisville & Nashville R. R. Co., supra.*

When it became evident that the section as originally enacted was of little or no force in that form and the proposition to amend the section into some effective shape was before Congress, the same difference of view again developed. Some were for an absolute long-and-short-haul section, while others, and apparently the great majority, were satisfied that there were cases where carriers should in justice be permitted to make the higher charge at the intermediate point. The problem was to locate these cases. For that purpose it was provided that in every instance where the carrier desired to deviate from the rule of the section it should apply to the Commission, which should investigate and pass upon the propriety of the lower charge at the more distant point; but Congress did not intend to leave this to the mere whim of the Commission any more than it intended to permit arbitrary action where the question is upon the reasonableness of the rate or the undueness of a preference. This is clearly stated by Mr. Mann, chairman of the committee having the bill in charge in the House, who said, in explaining the meaning of this section upon the floor:

> Remember, whatever the Commission does in respect to this matter, it is always bound by the act of Congress

that rates shall be just and reasonable and that railroad companies shall not establish unjust and unreasonable rates, so that practically what we do here is to give the Commission power to say what in a particular case shall be a just and reasonable rate, although we declare as a general proposition that it shall be unjust and unreasonable to charge more for a short haul than for a long haul.

414 To the same import were the remarks of Senator Sutherland, who, when the conference report containing this proviso was before the Senate, said in answer to the objection that in its present form it was void as a delegation of legislative authority:

> When the Interstate Commerce Commission comes to pass upon an application from the railroad companies to be permitted to charge more for the short haul than for the long haul, or less for the long haul than for the short haul, would not the Interstate Commerce Commission itself violate the provisions of section 1 and section 3 that I have read if it did not determine the matter according to the rules laid down in those sections? In other words, must not the Interstate Commerce Commission, in passing upon this question, determine that the rates involved are reasonable, and that as adjusted they do not unjustly or unduly discriminate against any locality? Does not the general language in the law furnish the rule which the Interstate Commerce Commission must adopt in carrying out the provisions of this section?

The question may arise as to what elements the Commission should now take into account in determining whether permission should be granted to deviate from the rule of the fourth section. It was formerly held by the Commission that in applying that section only competition by water and competition with railway lines not subject to the act to regulate commerce could be considered; that all other forms of competition should be disregarded. Is this rule to be still observed?

We think not. The former holding of the Commission was

under the section as it then existed and expressed an attempt to so construe the words "circumstances and conditions" as to give some real vitality to that part of the act. The section to-day in its practical application is entirely different and the questions presented for consideration are different. We are considering now not merely whether circumstances at the two points are dissimilar, but whether, on the whole, that dissimilarity justifies a departure from the rule of the section.

Competition of carriers subject to the act has always been a factor with us in determining whether a preference in favor of a given locality is due or undue, and that is substantially the question which must be answered in passing upon an application under the present fourth section.

Strictly speaking, there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which transports for it. The carrier makes a rate from a given market, not out of favor to that locality, but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads. The whole situation must be considered by us in passing upon these applications.

415 Such would seem to be the opinion of the Supreme Court, which uses in the *Import Rate case*, 162 U. S. 197, the following language:

> That in passing upon questions arising under the act the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether

any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; that among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered.

The amended section provides, as did the original section, that the Commission may from time to time prescribe the "extent to which such designated common carrier may be relieved from the operation of this section." Congress has evidently had it in mind at all times that cases might arise where carriers should properly be permitted to charge a lower rate at the more distant point, and has intended to arm the Commission with authority to do justice in such instances by permitting a deviation from the rule of the section and prescribing the amount of that deviation. This authority can be exercised by prescribing the maximum difference which may be made against the intermediate point or by fixing a rate at the more distant point below which the carrier must not go, or by defining the territory from which the higher intermediate charge may be made.

We hold that under the amended section it is the duty of the Commission to investigate each application made by a common carrier for leave to depart from the rule of the section. If we are of the opinion, upon a view of the entire situation, that to grant the application will not result in unjust or dis-

criminatory rates and practices, then it should be granted; otherwise it should be denied; and the Commission may, if in its opinion an unlimited departure from the rule of the section ought not to be granted but that a limited departure should be, prescribe in any way that is definite and certain the extent to which the departure may be made. So interpreting the section, we proceed to inquire whether the relief to which the complainants are, in the opinion of the Commission, entitled can in either of the above cases be secured by an order under the fourth section either upon the applications of the carriers for relief under that section or in the cases themselves. And, first, we may consider the case of the city of Spokane.

Spokane is located about 400 miles east of the Pacific Ocean, in the midst of a region rich in agricultural and mineral resources. Between it and the coast lies the Cascade Range of mountains. Spokane is the principal city in Washington east of these mountains and aims to distribute to the territory which surrounds it, in which attempt it meets severe competition from Seattle, Tacoma, and Portland.

Two of the trunk lines of railway serving Spokane both from the east and the west are the Northern Pacific and the Great Northern, the principal defendants in the *Spokane case*. Traffic handled by these carriers from eastern points of origin to Pacific coast cities passes through Spokane and over the Cascade Range. Notwithstanding this, rates to Seattle, Tacoma, and Portland from points as far west as St. Paul and the Missouri River are, for the most part, materially higher to Spokane than to coast towns. Merchandise consumed in territory east of the mountains can be hauled through the city of Spokane, across the mountains, to Seattle, and from Seattle back over the mountains a second time, at a

less transportation charge than it can be taken to Spokane and thence distributed to this territory. It is against this relation of rates that Spokane has always protested and now protests. Its complaint is, first of all, against this violation of the fourth section.

Carriers justify this scheme of rate making upon the plea that water competition between the Atlantic and the Pacific coasts fixes the rate from eastern points of origin to the coast cities, and that they, in naming their rates to those points, simply meet the water rate. The fundamental fact upon which their entire defense is bottomed is water competition between the Atlantic and the Pacific coasts, although, to an extent, the additional claim is made that articles of foreign manufacture can be brought in at low water rates, which compete with similar domestic products.

The complainants insisted upon the original hearing, and have renewed the claim at every stage of this proceeding that there is no active water competition; that the whole claim of water competition is put forward by the defendants as a pretense by which to justify the rank discrimination against interior points. The first inquiry is therefore whether water competition actually exists which has produced and does produce an effect upon rates from the Atlantic seaboard to the Pacific coast, from New York to San Francisco, treating these two cities as illustrative of the localities in which they stand.

This question of fact has been often considered in the past, and with but one unvarying result. The circuit court of the United States has twice found, once in a proceeding concerning these very rates to Spokane, that active water competition
417 does exist which controls the coast rate. *Farmers L. & T. Co.* v. *N. P. Ry. Co.*, 83 Fed. Rep., 249; *I. C. C.* v. *A., T. & S. F. Ry. Co.*, 50 Fed. Rep. 295.

This Commission has repeatedly found and recognized the same fact. *In re Transcontinental Lines*, 2 I. C. C. Rep., 324; *San Bernardino Board of Trade* v. *A., T. & S. F. Ry. Co.*, 4 I. C. C. Rep., 104; *Rice* v. *A., T. & S. F. Ry. Co.*, 4 I. C. C. Rep., 228; *Colorado Fuel & Iron Co.* v. *S. P. Co.*, 6 I. C. C. Rep., 488; *Kindel* v. *A., T. & S. F. Ry. Co.*, 8 I. C. C. Rep., 608; *Holdzkom* v. *M. C. Ry. Co.*, 9 I. C. C. Rep., 42; *Red Cloud Mining Co.* v. *S. P. Co.*, 9 I. C. C Rep., 216; *Shippers' Union of Phoenix* v. *A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep., 250; *Business Men's League of St. L.* v. *A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep., 318; *Kindel* v. *B. & A. R. R. Co.*, 11 I. C. C. Rep., 495; *Enterprise Mfg. Co.* v. *G. R. R. Co.*, 12 I. C. C. Rep., 130; *Merchants Traffic Association* v. *N. Y., N. H. & H. R. R. Co.*, 13 I. C. C. Rep., 225; *Burgess* v. *Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668; *Merle Co.* v. *N. Y. C. & H. R. R. R. Co.*, 17 I. C. C. Rep., 475; *Fuller & Co.* v. *P., C. & Y. Ry. Co.*, 17 I. C. C. Rep., 594; *Kentucky Wagon Mfg. Co.* v. *I. C. R. R. Co.*, 18 I. C. C. Rep., 360; *Receivers' & Shippers' Association of Cin.* v. *C., N. O. & T. P. Ry. Co.*, 18 I. C. C. Rep., 440; *Nevada R. R. Com.* v. *S. P. Co.*, 19 I. C. C. Rep., 238; *Harbor City Wholesale Co. of San Pedro* v. *S. P. Co.*, 19 I. C. C. Rep., 323.

In the original hearing of the *Spokane case* we re-examined that whole question and reaffirmed our decision. *City of Spokane* v. *Northern Pacific Ry. Co.*, 15 I. C. C. Rep., 376.

In the recent hearing upon the applications of transcontinental lines for leave to disregard the rule of the fourth section evidence has again been produced upon this subject which conclusively shows that the previous finding of the Commission is right. We had before us in the *Spokane case* the manifests of two ships from New York to San Francisco, and in the last hearing we had the manifests of two other ships.

They showed in detail the articles transported, the point where they originated, the destination for which they were intended, and the rate under which they moved. These actual transactions prove more conclusively than any mere statement that almost every article which is the subject of ordinary commerce between the coasts can and does move from New York to San Francisco by water at rates materially lower than those maintained by the defendants by rail. We have used San Francisco as the destination port upon the Pacific coast, and in some instances rates from New York to San Francisco are a trifle lower than to other coast cities, but, generally speaking, the San Francisco rate is maintained at Los Angeles, Portland, Seattle, Tacoma, and other points upon the coast.

Passing for the time being the extent and effect of this competition at interior points it must be found as a fact that
418 there is real and active water competition between New York and San Francisco, between the Atlantic and the Pacific coasts, which does limit the rate of transportation which can be charged by rail between those points upon nearly every article which moves by rail.

It is said that the amount of the movement by water is so insignificant that it should be disregarded. The amount is not insignificant. If reference be had to the traffic which actually originates upon the Atlantic seaboard a considerable percentage moves by water, but the significant thing is not the amount of the movement, but the ever-present possibility of that movement. As was said by the Supreme Court in the *Alabama Midland case*, speaking of the effect produced upon rail rates to Montgomery by the Alabama River:

> * * * When the rates to Montgomery were higher a few years ago than now, actual, active water-line competition by the river came in, and the rates were reduced

> to the level of the lowest practicable paying water rates, and the volume of carriage by the river is now comparatively small; but the controlling power of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity.

So here the ocean is ever present. The possibility of using it as an avenue of transportation is ever open, and the fact that it will be used, if for any considerable length of time the defendants maintain rates which are so high, or so adjusted as to render it profitable for shippers to resort to that means of transportation, is never doubtful.

The carriers have met this competitive situation by establishing from the Atlantic seaboard to Pacific coast ports a series of commodity rates. Their class rates may be disregarded, since no traffic actually moves under them, the business being handled under some 1,300 commodity items, said to be so adjusted as to best meet this water competitive situation.

These rates to Pacific coast terminals are made applicable not only from the Atlantic seaboard where water competition exists, but from territory as far west as the Missouri River and even Colorado; that is, the same rate to Pacific coast terminals is made from Colorado common points and all territory east, thus creating a blanket some 2,000 miles in width.

Upon the west there is no blanketed territory. Rates to interior points are usually constructed by adding the local rate from the terminal to the interior. This is not so in all cases. It was said, for example, that rates from the east to Spokane were higher than the coast rate by about 75 per cent of the local back. In all cases, however, the rate from all this blanketed territory to the interior point is very much higher than to the more distant coast point.

Now, assuming that there is actual water competition which these defendants may meet, is there anything in this scheme of transcontinental rate making of which Spokane can legiti-
419 mately complain? The question is not whether rates from the Missouri River or from other eastern points of origin to Spokane are excessive. That question has been considered and passed upon by the Commission. We are now inquiring whether the system upon which these rates are constructed is unlawful, and whether any substantial relief should be or can be given by an order under the fourth section.

The complainants contend in the first place that the terminal rates are themselves sufficiently high and that intermediate rates for a less service ought not to be higher. If the assumption of fact involved in this contention is correct the conclusion must follow. Without inquiring what the law may have been when it was only necessary to show the existence of dissimilar circumstances and conditions at the more distant point, it is clear to us that to-day competition at that point can not be relied upon as a justification for the higher intermediate rate, unless the effect has been to reduce, below what it would otherwise be, the long-distance charge. It would be the rankest discrimination to allow these carriers to make a higher charge at the intermediate point for the shorter haul unless they were compelled by some cause beyond their control to accept at the long-distant point less than a reasonable compensation for the service.

Upon the question of fact the Commission is concluded by its previous findings in this case. As already stated there are in effect to-day some 1,300 commodity rates from eastern destinations to north Pacific coast terminals, and we have suggested as reasonable a schedule of about 550 rates from the same points of origin in the east to Spokane. These 550

items move the bulk of the traffic both to the coast and to Spokane. The rates found reasonable by us from St. Paul to Spokane are substantially the same as those from St. Paul to Seattle, but from territory east of St. Paul they are higher, depending upon the distance. Our rates from Chicago to Spokane are about 10 per cent higher than the present coast rates from the same point.

If therefore the fourth section were to be applied, having reference to this contention of the complainants alone, we must hold that from the Missouri River and corresponding territory no higher rate should be charged to Spokane and Spokane territory than to the coast, but that from Chicago and territory east of the Missouri River generally a higher intermediate charge might be made.

The next contention of the complainants is that even though there be water competition between the Atlantic seaboard and the Pacific coast and even though the force of that competition does dictate the rate between those points, nevertheless there is no such competition from the interior, as, for example, from Chicago, and that therefore while the defendants may properly charge a higher rate from New York to Spokane than the corresponding rate to Seattle, they can not properly maintain this discrimination when the point of origin is Chicago.

420

In this discussion New York, which is the principal port of departure upon the Atlantic seaboard, and San Francisco, which is the largest and most important port upon the Pacific coast, may be treated as synonymous with the coast territory itself. It is evident that traffic in New York can move the entire distance to San Francisco by water, and that therefore water competition may and does control the rate between those points. If, now, traffic is at some interior point, like Chicago, it can only take this water route by being carried

from the interior point to New York by rail. The total cost of the carriage from the interior point to San Francisco would be made up of the cost to New York and that from New York. It would follow that as the distance from the Atlantic coast increases the cost of carriage by water also increases and the direct effect of water competition decreases. If, therefore, rates were so adjusted as to simply meet and fully meet water competition the rail rate from New York to San Francisco would be lower than that from Chicago by the amount of the rate from Chicago to New York.

If, for example, the water rate on a given article from New York to San Francisco is 50 cents, and this forces a rail rate between those points of 60 cents, and if the rail rate from Chicago to New York is 25 cents, then the rate from Chicago to San Francisco would be 85 cents. Spokane contends that since the rate from Chicago is the same and sometimes even lower than from New York it must follow that it is due to some other cause than water competition.

This would not of necessity follow for the reason that the carrier might see fit to fully meet the water competition at Chicago while declining to meet it at New York. In a case recently considered by the Commission involving the right to make higher charges at intermediate points than at the long distance point between New York and Charleston, S. C., it appeared that while the rail rate to Charleston was much lower than to interior intermediate points only a small per cent of the total traffic to Charleston was handled by rail, while at interior points the higher rail rates were sufficiently low to take all the business. So in this case the carriers might deem it good policy to establish rates from interior territory which would carry the traffic as against the water and to the entire exclusion of the water, although it would not be policy to attempt to make such rates at the seaboard.

The testimony in this and other cases indicates that the principal movement by water is from the Atlantic seaboard itself, from New York and from points having water commu-
421 nication with New York, and from interior territory immediately contiguous. There is a considerable movement as far inland as Buffalo and Pittsburg, and an occasional movement from Detroit, Chicago, and similar points. A movement of starch from Cedar Rapids, Iowa, of considerable proportions was shown, but, generally speaking, up to the present time comparatively little traffic originating west of the Buffalo-Pittsburg zone has reached the Pacific coast by water.

In this connection it should be observed that in the past water competition has been by various devices upon the part of rail carriers restrained and subdued.

At the outset the special contract system was devised, under which large rebates from the going rate were paid to those shippers who exclusively patronized the rail lines. By this scheme the ships were soon robbed of the bulk of their traffic.

When this expedient would no longer be tolerated transcontinental railroads subsidized the Panama line, which had become the active water competitor, by purchasing a considerable part of the total available space in the boats of that line from New York, and thus controlling the rates by that route. This was continued for years.

Since the advent of the American-Hawaiian line there has been, not perhaps a definite agreement between it and the rail lines, but a general understanding that such rates should be maintained by water as compared with rates by rail as would give to the vessels a reasonable amount of traffic from the immediate vicinity of New York.

Of more importance than all the rest have been extremely

harmonious relations generally existing between shippers and rail carriers upon the Pacific coast. Those shippers most interested in transcontinental rates have been the jobbers of San Francisco and other coast-terminal cities. The only desire of those shippers has been that rates should be so adjusted as would enable them to transact business against interior cities. So long as this relation of rates has existed the jobber has been willing to pay both a high rate to San Francisco and a high rate from San Francisco. In consideration that this relation should be maintained the shipper upon the coast has found it for his interest to patronize largely the rail carrier without inquiring too closely what rates were available by water.

Competition at the present time seems to be more active. An independent line has been established upon the Pacific coast. The Panama Railroad has become an actual competitor for this business. The American-Hawaiian line, finding competitors in the field, has been compelled to reduce its charges. Testimony recently given before the Commission showed that a line of steamers had been put on from New Orleans which was actually handling consignments of lumber from New Orleans to San Francisco for 45 cents per 100
422 pounds and that shipments of lumber were moving from Memphis to San Francisco at 55 cents per 100 pounds, as against the present transcontinental rate of 75 cents.

Everything indicates that the effect of this water competition will increase rather than diminish from now until the completion of the Panama Canal and when that waterway is open for business both rate and facility will be very much better than to-day.

It is true, however, that carriers maintain the same transcontinental rate from Chicago as from New York, not by rea-

son of the direct effect, but rather as an indirect result of water competition. The reason for this will be best understood by an actual illustration. Assume that a building requiring the use of a large amount of structural steel is to be elected in San Francisco. That steel is manufactured both at the seaboard and in Chicago. That which is made at the seabord can be taken by water from the point of origin to the point of destination, and the rate at which it can move is therefore determined by water competition.

The cost of producing steel is the same at both points. In order, therefore, that the producers may stand an equal chance in competing for this business it is necessary that the rate from both points should be the same, and the business can not move from Chicago unless the rate from that point is as low as from the seaboard.

The Atchison, Topeka & Santa Fe Railway begins at Chicago. If this steel is bought at Chicago and moves by that line, the entire freight money is retained by it; if, upon the other hand, the steel is bought at New York, moved by some line to Chicago, and there delivered to the Santa Fe, that line only receives a part of the through charge. The service performed by it is the same in either case, but the amount of its compensation is larger when the freight originates at Chicago. It is therefore for the interest of that line to name a rate from Chicago which will originate the business at that point instead of allowing it to originate upon the seaboard. The interest of the line from New York to Chicago is that the business should be taken up at New York, and as a compromise it is finally agreed to apply the same rate from both these points. This clearly shows how water competition, if it does not actually extend to the interior point, may and does dictate the rate from that point.

What would be true of the steel entering into the construction of this building is true also of almost every article of commerce which moves between the east and the west. The middle west today manufactures nearly everything which is produced upon the Atlantic seaboard, and the effect of this policy of the railroads has been to make the middle west the almost exclusive market of origin for the inter-mountain country and largely for the Pacific coast itself. This competition
423 is strictly that of carriers, although sometimes termed "market" completion.

There is in this same connection market competition proper. Chicago, with all its political and financial strength, demands that it shall be accorded the same right to sell in San Francisco which its rival New York has. Its argument is this: If this traffic moves by rail from New York it passes through Chicago, and is hauled 1,000 miles farther than as though it originated at Chicago. If it originates at Chicago there is eliminated from the service the useless waste of energy involved in transporting the business for the first 1,000 miles. Therefore, if this traffic is to move by rail such a rate should be made as will move it from Chicago and not from New York.

And why is not this argument a sound one, at least if reference be had entirely to eastern territory? It is for the interest of Chicago that it be allowed to sell in San Francisco; it is in the interest of San Francisco that it be allowed to buy in both Chicago and New York. It is in the interest of the carriers, considered as a whole, that the business originate at the nearer point and that is the just interest of the public to the end that useless waste be avoided. New York and the lines leading from New York to Chicago alone suffer.

Considering this question broadly and in all its aspects we

can not say that the legitimate effect of water competition upon the Atlantic seaboard may not be to reduce the rail rate from interior points.

The third claim of the complainants is that while the defendants recognize upon the Atlantic seaboard the force of competition in its various forms, hereinbefore stated, they decline to do so upon the Pacific coast. While they extend the New York rate to Chicago and the Missouri River they decline to extend the Seattle rate to Spokane although every reason which justifies that in the former case requires it in the later. Just as traffic can be and occasionally is carried by rail from Chicago to New York and thence by water to San Francisco, so is traffic at times and indeed much more frequently handled from New York to Seattle by water and from Seattle to Spokane by rail. If the application of the transcontinental rate from Chicago is necessary to prevent the movement by water from Chicago through New York, all the more is the application of that rate from New York to Spokane necessary to prevent the movement of traffic from New York to Seattle and from Seattle to Spokane.

Spokane is a great distributing center and aims to be a greater one. It demands the right to rates which will enable it to bring from the east and distribute into territory lying east of the Cascade Range. Such traffic, when distributed from Spokane, is hauled a less distance by 400 miles than when distributed from Seattle, and the distribution haul itself is also much less expensive. It is a manifest economic waste to haul traffic over the Cascade Mountains and back again. 24 The interest of the carrier and the public as much require that this business should stop at Spokane instead of going on to Seattle as that it should originate in the middle west instead of upon the Atlantic seaboard.

Spokane insists that if these defendants give to Seattle the right to buy in both New York and Chicago, when its location entitles it to buy in New York alone, they should give to Spokane, which is nearer by 400 miles, the right to buy in both New York and Chicago. New York urges that if Chicago is given an opportunity to sell in Seattle then New York shall be given the opportunity to sell in Spokane. In other words the same blanket rate which is applied on the east should be applied upon the west.

The carriers insist that they may determine as a matter of policy whether they will meet this water competition, and in what manner and at what points; and this is true so far as that is a matter of policy. To a disinterested observer it would seem to be in the true interest of these transcontinental lines, which begin at the Missouri River, to make rates which would build up interior points as against the coast. The haul to these points is shorter and less expensive. The distribution from these points is easier, but, above all, the traffic which is created at such a point belongs to the rail line which creates it, while the traffic which is fostered upon the coast is the prey of every vessel which sails the sea. Carriers in the future will doubtless adopt this method and will voluntarily make rates to interior points like Spokane which will enable those localities to compete with coast cities.

Admitting, however, that it is for these defendants to say to what extent if at all they will meet these competitive conditions, they are not at liberty, in meeting them, to adopt such a policy, nor to execute the policy adopted in such a manner as to unjustly discriminate between different localities.

They may perhaps determine whether they will apply the coast rate, which is fixed by water competition, at the interior point, but if they apply it at one point they must apply it at

others which are similarly situated; they can not, in the absence of some sufficient reason, give Chicago that rate and refuse it to St. Louis and Kansas City. They can not so adjust their whole tariff scheme, upon the plea of water competition, as to concentrate in these coast cities commercial and transportation advantages to which their mere location does not entitle them, and that in substance is the effect of the present rate adjustment.

For the purpose of disposing of this matter by an order under the fourth section we have divided the United States into five territorial zones, as follows:

(The transcontinental groups hereinafter described are as specified in R. H. Countiss, agent's, transcontinental tariff I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of transcontinental group F, to the intersection of the Arkansas and Oklahoma state line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2 embraces all territory in the United States lying east of line No. 1 and west of a line called line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the Straits of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of transconti-

nental group C; thence follows the east boundary of group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of line No. 2 and north of the south boundary of transcontinental group C and west of line No. 3, which is the Buffalo-Pittsburg line from Buffalo, N. Y., to Wheeling, W. Va.; thence follows the Ohio River to Huntington, W. Va.

Zone No. 4 embraces all territory in the United States east of line No. 3 and north of the south boundary of transcontinental group C.

Zone No. 5 embraces all territory south and east of transcontinental group C.

Looking at this whole situation and endeavoring to justly consider the interests of all parties affected, including the carriers, we are of the opinion that from zone 1 no higher charge can justly be made at any intermediate point than to a more distant point. The eastern limit of this territory is approximately 1,500 miles from the Atlantic seaboard, almost midway between the Pacific and Atlantic oceans. No traffic has ever been, and none probably ever will be transported from this section to the Atlantic coast and thence by water to the Pacific coast. Giving full weight to the effect of competition of all kinds, we can find no justification for a system of rates which maintains from this territory a higher charge to any interior point than is made to the coast.

With respect to territory embraced in zone 2 the case stands somewhat different. This zone comprises the Mississippi Valley and a considerable portion of the great manufacturing area of the west. It lies 400 miles nearer the Atlantic seaboard, with which it is connected in part at least by lines of railroad affording the cheapest transportation service in

any part of the country. Still there never has been and there probably never will be in the future any considerable movement of traffic from this territory to the Pacific coast by way of the Atlantic seaboard.

We are of the opinion that rates from this territory to intermediate points may properly exceed by not more than 7 per cent rates from the same points of origin to Pacific coast terminals.

From zone 3 there is still greater possiblity of actual transportation competition on business destined to Pacific coast points, although from this section hitherto the actual movement has been only occasional.

We are of the opinion that from points or origin in this territory rates to intermediate points may properly exceed those to terminal points by not more than 15 per cent.

In the past the actual movement from eastern points of origin to Pacific coast terminals has been mainly confined to zone 4, and even in this zone the greater part of the traffic has originated in or near the seaboard itself.

The force of water competition is greatest at New York and gradually diminishes as the distance from New York increases, but we are of the opinion that this entire territory may properly be treated as a single group, and that rates from points of origin within its limits to intermediate points may properly exceed those to terminal points by not more than 25 per cent.

No opinion is expressed at this time as to zone 5, since rates from that territory are not involved in these proceedings.

An order will be entered, effective November 15, denying the application of the carriers, except that the charging of

higher intermediate rates will be permitted in accordance with the above findings.

A similar order will be entered in No. 879 against the defendants in that case with respect to the territory involved.

The statute does not in terms define the proceedings in which the Commission may inquire into alleged violations of the fourth section and grant the relief as specified in the proviso, but it is clear that any order which the Commission makes in that respect must be at all times subject to modification by it, and it seems equally clear that when complaint is made of a violation of the fourth section the Commission may, by order in that proceeding, grant appropriate relief against any violation of the act which is found to exist, including a violation of the fourth section, nor is it significant that the complaint was pending at the time of the amendment of the section.

It should also be noted that this is not a new and additional authority, but is simply the exercise of the jurisdiction provided for in the fifteenth section for the correction of un-
427 just discrimination. There is no essential difference between this order and an order which the Commission might make under the third section.

We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless re-

sult in some rates from the east which are higher and in others which are lower than those suggested by the Commission since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and no more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

We do not think that this order will give to the complainants the relief in No. 2662 to which they have been found entitled. The complaint in that case referred to rates between Utah common points upon the west, and the Missouri River, the Mississippi River, and Chicago upon the east. The rates which we have found reasonable from Chicago are substantially the same as the present transcontinental rates. In only a very few instances do they exceed those rates. All rates from the Mississippi River and the Missouri River, with possibly two or three exceptions, are materially less than the present transcontinental rates. Notwithstanding this order, carriers might still leave in effect from all the points involved rates materially higher than those approved by us. An order will therefore be entered in the Salt Lake case, No. 2662, effective November 15, 1911, establishing the schedule of rates found to be reasonable by the Commission in its opinion of June 7, 1910.

IN THE

United States Commerce Court.

No. 50	No. 1	No.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	UNION PACIFIC RAILROAD COMPANY et al.	DENVER & RIO GRANDE RAILROAD COMPANY et al.
v.	*v.*	*v.*
UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.

AFFIDAVIT OF J. C. STUBBS.

Before the undersigned authority this day personally appeared J. C. Stubbs, who, being duly sworn, on his oath deposes as follows:

I am Director of Traffic for the lines composing the Union Pacific Railroad System, to-wit: the Union Pacific Railroad Company, the Oregon Shore Line Railroad Company, and the Oregon-Washington Railroad & Navigation Company, and all railroad lines operated by the Southern Pacific Company. I am also Vice-President of all said railways. As Director of Traffic I am the chief traffic officer of the several lines.

I have been in the railroad service since the early part of 1869. After some previous experience in the United States Military Railroads, I first entered civil railroad service as Foreign Voucher Clerk at Columbus, Ohio, with the Pittsburgh, Cincinnati & St. Louis Railway. In September, 1870, I went to California as Chief Clerk of the General Freight Agent of the Central Pacific Railroad and in the latter part of 1871 or early part of 1872 was appointed Assistant General

Freight Agent, there being no principal, and performed the duties of General Freight Agent from that time on, being made General Freight Agent a year or two later. In 1882 or 1883 I was made Freight Traffic Manager of the Central Pacific Railroad, at the time lessor of the Southern Pacific Railroad. About 1885 I was made General Traffic Manager, this position covering passenger as well as freight traffic. In 1901 I was called to Chicago as Director of Traffic of the Union Pacific and Southern Pacific Systems, the Central Pacific in the meanwhile having passed under the control of the Southern Pacific Company. This position I now hold and have held since that time.

The Union Pacific and Central Pacific were first connected in joint business in May, 1869, forming the first through line of railroad between the Missouri River and the Pacific Ocean. The Southern Pacific, which had been completed to Deming, New Mexico, and the Santa Fe, which had been completed westwardly to the same place, joined at Deming in 1881. The Southern Pacific was completed into El Paso, and the Galveston, Harrisburg & San Antonio Railroad was completed easterly from El Paso and was joined at Sierra Blanca, about ninety miles east of El Paso, by the Texas & Pacific, which then took trackage rights from Sierra Blanca to El Paso over the G. H. & S. A., in the latter part of 1881, thus giving the T. & P. a line, by joint use, from Sierra Blanca into El Paso. At that time there was not a through line from New Orleans. But later on the G. H. & S. A. was extended farther East, and at the same time was built west from San Antonio, joining in the latter part of 1882, or very soon after January 1, 1883, at Devil's River. This made the through line to New Orleans. The G. H. & S. A. connected at Houston with the Texas & New Orleans road, which ran to the Louisiana-Texas line, connecting with the Louisiana Western, which ran to a

connection of the Morgan's Louisiana & Texas Railroad at what was then known as Vermillionville, but now as Lafayette—making the through line to New Orleans.

Later on, in the summer of 1883, the Rio Grande Western was completed to Ogden, Utah, to a connection there with the Central Pacific, and that, with the Rio Grande Western, the Denver & Rio Grande, and the several lines reaching eastwardly from Denver or westwardly to Denver, made another through line.

The S. P. of California, as it was then known, built from Mojave, California, to Needles on the Colorado River. Some time in 1883 it was connected there with the Atlantic & Pacific, built westwardly from Albuquerque. In 1884, possibly in the early part of 1885, this Needles branch was leased to the Santa Fe. In 1885 the Santa Fe, or people representing those interests, acquired the Southern California, or California Southern, as it was called—one time by one name, and again by another—which was built from Barstow to San Bernardino. This gave the Santa Fe and Atlantic & Pacific, by use of the Needles line to Barstow, a through line to San Bernardino. The Santa Fe then contracted with the S. P. for trackage rights from San Bernardino into Los Angeles, later on building from San Bernardino into Los Angeles—thus giving them a through line from the Missouri River into Los Angeles.

Before the completion of the San Joaquin Valley Road the Santa Fe by traffic contract for the interchange of business made a through line to San Francisco with the S. P. from Mojave by the use of the S. P. rails from Mojave to San Francisco—that is my recollection. I think the contract gave the Santa Fe rights alternately to take trackage rights over the line from Mojave into San Francisco upon certain notice, but they never exercised that option. In 1898, I think, the

San Joaquin Valley road was constructed by private parties from Stockton to Bakersfield, and about the time of its completion, or possibly before, it was purchased by the Santa Fe interests. Very soon after, the Santa Fe contracted with the S. P. for the joint use of its line from Mojave to Bakersfield, and this gave the Santa Fe a through line under their own management to Stockton, and later on they completed their line from Stockton to San Francisco Bay—practically San Francisco—so that in 1900 the Santa Fe had its own independent line to San Francisco Bay and also to Los Angeles and Redondo.

The O. S. L. and O. R. & N. were connected at Huntington in 1884 as a through line. The N. P. was completed to Tacoma in 1883, and to Portland, Oregon, about the same time. The G. N. was completed to Seattle in 1892 or 1893. In 190? the El Paso & Northwestern—the corporate title under which that road was built—was connected with the Rock Island, making another independent line into El Paso. The C. P. was completed to Vancouver in 1887. The St. Paul was completed in 1909, and the Western Pacific quite recently.

Before the opening of the U. P.-S. P. all-rail route, transportation between the East and California was by steamship and rail over the Panama Route; steamships to Colon on the Atlantic side, the Panama Railroad across the Isthmus to the Pacific side, and then steamships into San Francisco; also by Clipper ships around Cape Horn. The result was that the Pacific Coast trade was almost wholly with the Atlantic Coast cities, the credits and connections of the Pacific Coast jobbers were made with the jobbers of the Atlantic Coast cities. The fact that there was quite a wide difference between the cost or transportation—rates and other considerations—via the Isthmus and Cape Horn, led the merchants to divide their traffic. They would ship somewhat of every kind of goods

needed to complete stocks, all of their high class, very valuable merchandise, against which interest and insurance ran heavily, by steamers, which ran twice a month.

This service was objectionable on account of the transfer on the Atlantic side from ship to car, and on the Pacific side from car to lighter, and lighter again to ship. But the major portion of the tonnage, especially heavier commodities, staple goods, went by all-sea route via Cape Horn. In that day everybody that brought goods in by sea, even from a domestic port, was called an importer. The result was that the importers had to carry very large stocks, practically a six months' stock on the sea and six months' stock in store, depending upon the Panama service to make good any deficiencies in their orders. The Panama service averaged about forty-five days for freight and twenty-six days for passenger service. The Clipper ship service via Cape Horn ranged from ninety days—(made once, I believe, by the Young America) to 180 days—the average being about 120 days. Goods moved in large quantities because, as I recall, the ships sailed regularly, only about one every two months.

I was not on the Pacific Coast when the railroad was opened, did not get there until 1870, but became familiar with what had been done after I got there. The first tariff, as I remember, from New York to San Francisco, was on the scale of $8.00 for first class, reduced in 1870 to $6.00 per cwt, first class. The railroads got very little business. The merchants were wedded to their connections, customs and traditions, and the adjustment of their business to the use of the sea. The jobbers thought that the longer routes gave them considerable advantage because it took a good deal of capital to carry the large stocks made necessary by the use of the sea routes; so when the railroad was opened, the first proposition they had to face was that anybody that would ship a carload could get

the lowest rate at the time. The result was that they were not very friendly to the all-rail line and they got very little business. If we reduced our rates, reductions were made by the sea; and it was finally decided that by an open tariff at that time we could make no headway in developing the traffic by rail. Out of that condition, what is popularly known on the Pacific Coast as the "Contract plan" was evolved.

Merchants had been dividing their business, as I have said. They would ship a certain portion via Panama, and a much larger part by Clipper ship; and they shipped more or less by rail, after the road was opened. But the cost of transportation to the merchant differed according to the route that he used; and knowing that he would assort his business, he would use the railroad only as a matter of convenience, and use the Panama very much in the same way, except that the Panama route took a larger share than the railroads did. But most of his goods went by sea. We proposed to the merchants that if we could have a guarantee of all their business for one year, we thought we could afford to make a rate that would make it profitable to them to use the all-rail route. This proposition was taken up, one by one, with the principal jobbers. We sat down with them, examined their bills of lading, their insurance policies, their invoices, so as to actually determine the cost, all things considered, of the use of the three routes and the volume of tonnage that they sent over these three routes. And upon the results of that examination we based an offer to them of an all-rail rate that we would guarantee for one year. I think that explains it in a general way. One by one the principal jobbers fell into that; at San Francisco and at Sacramento, and I think all the principle so-called importers of Portland—two or three did, I know. Before we got through with it we practically had all the so-called importers under contract, except one firm in San Francisco which

never came in. These contracts were individual. They showed different rates on the same article, for the same service, for different merchants; because we found the widest sort of discrepancy by the ships, and we had to deal with each merchant by himself considered. But after we had operated for possibly a year, and got the majority, if not nearly all, of the merchants under contract, we then took up these contract rates and harmonized them, and made a common list of rates and published that list of rates; and thereafter that common list of rates was applied to everybody—large or small shipper—who would undertake to enter into a contract to ship exclusively by rail for one year, and it was published. At the same time there was another general tariff very much higher—in fact, the regular tariff that was in existence before we began this contract plan—which was applied to the shipments of merchants or anybody that was not under contract. My recollection is that this contract plan began in 1878.

On account of the total destruction of all our records in the San Francisco fire of 1906, I haven't any means of determining just what the date was, and the U. P. records unfortunately have been destroyed, too. I think it ran until 1883, more or less. Of course this was initiated over the U. P. and Central Pacific—the original line. As the Santa Fe line, and the T. & P. line, and the Rio Grande line, were respectively opened up, they adopted the contract plan. But when these lines multiplied, it became burdensome; we couldn't handle it very well; and it became obnoxious to the shippers, because the only way it could be handled was to bill the goods at the general tariff and refund by voucher the difference between the general tariff and the contract tariff. So along about 1883, possibly 1884, it was abandoned. But this list of contract rates, which I have described to you, became the basis for the open rates. I might say it was practically adopted, although

there may have been eliminated some of the very low rates that were taken under contract, because of the compensation derived from the higher class of goods, which the same merchant would ship.

In the beginning, the sea competition was absolutely controlling on rates to the Pacific Ocean. The influences I have named led to the abandonment of the contract plan. I might add, however, that they were not the sole influences requiring this. In the meantime, there was a rapid growth of manufacturing industries west of the Allegheny Mountains. Opportunity was thus afforded by the all-rail lines for the Pacific Coast merchants to make business connections in that territory.

The influences I have named led to the abandonment of the contract plan. There were other influences joined to these, however, which acted with them in bringing about the result. During the existence of the contract plan there had been a rapid growth of manufacturing industries west of the Allegheny Mountains. Opportunity was thus afforded by the all-rail carriers for the Pacific Coast merchants to make business connections in that territory.

In the beginning the sea competition at the coast was absolutely controlling. The only way in which it could be met was by the contract plan stated above. As the years have gone by the force of the competition of the sea from the Atlantic Seaboard to the Pacific Seaboard has increased and there has been no time when the rail carriers could make a rate to the Pacific coast without paying due regard to the force of this competition. Originally the only ships plying from the Atlantic Seaboard to the Pacific Coast were sailing vessels moving around Cape Horn. About the year 1900 the American-Hawaiian Steamship Company put on a line of steamships sailing from New York to the Pacific Coast ter-

201

minals through the Straits of Magellan. Before the advent of the steamships the time of the vessels against which the rail carriers had to contend was on an average of about 135 days from New York to San Francisco. The steamships through the Straits of Magellan reduced the time to about sixty days. This reduced the cost of marine insurance, enabled the merchants on the Pacific Coast to get their goods in quicker time and thereby carry smaller stocks, thus saving interest and more rapidly turning their capital. The result was that more freight destined to the Pacific Coast found its way into the ships' holds and the volume of business continually increased. About January, 1907, the American-Hawaiian Steamship Company changed its route from the Straits of Magellan to the Isthmus of Tehuantepec. Freight was taken in the ships of the company to the eastern terminus of the Tehuantepec railroad and transferred across the isthmus to the western terminus of the railroad, where it was again loaded in the ships and taken to the Pacific Coast terminals. By taking this route the time of the movement by sea was reduced to about thirty days from New York to San Francisco. Again there was a reduction in marine insurance; again merchants could much more rapidly replenish their stocks with freight moved by sea; and the competition of the sea craft against the all-rail carriers was much intensified. The takings of the American-Hawaiian line have steadily increased since the establishment of their Tehuantepec service. At the present time they have a ship sailing every six days from New York carrying freight to the Pacific Coast terminals.

The sea competition has been further intensified in this: The United States Government has a line of steamers plying from New York to the eastern terminus of its Panama road. This line of steamers is engaged in carrying commercial freight. From the western terminus of the Panama road

202

there plies the Pacific line of steamships called the California Atlantic Steamship Line to Pacific Coast terminals. There also plies the Pacific Mail Steamship Company. These steamship lines have traffic agreements with the Government line and have entered on an active business campaign, carrying a considerable amount of freight. The movement of freight from Atlantic Seaboard around Cape Horn and through the Straits of Magellan has constantly increased, so that by reason of the present sea routes actually bearing freight there has been a very acute and ever growing competition. When the canal opens for business across the Isthmus of Panama the movement by water will, I am sure, very vastly increase, and after that time, as I am firmly convinced, the transcontinental rates of the rail carriers to Pacific Coast terminals will have to be made exceedingly low, affording the minimum of profit very much below a reasonable profit, or else practically all the terminal business from the Atlantic Seaboard to the Pacific Coast will be driven to the sea.

The result of this sea competition, as will be explained later, has been to force the rail carriers to make very low rates from the Atlantic Seaboard to the Pacific Coast terminals. By reason of the quicker time of the rail carriers these carriers have been able to maintain somewhat higher rates than are made by the sea carriers; but at no time could the rates be made reasonable in themselves for the service performed by the rail carriers, and it has happened more than once when the rail carriers have raised rates on a given commodity in an endeavor to secure for the carriage of that commodity a rate reasonable in itself, that the effect of the raise was to diminish the takings of the rail carriers and turn the movement of the commodity to the sea carriers, so that the rate had to be lowered again.

The water competition met by the rail carriers at the Pa

cific Coast has not been confined to the carriers moving freight from the Atlantic to the Pacific Seaboard, but there has been a considerable movement by water of freight to the Pacific Coast from the Orient and from Europe. Practically all commodities which are carried by the rail carriers are carried by the ocean carriers, except live stock, highly perishable goods, acids and explosives. It is quite possible to place on steamships refrigerating plants, and it is my belief that after the Panama Canal is opened such plants will be installed on vessels which will successfully accomplish the carriage of perishable commodities.

The effect of water competition has not been confined to goods moving from the Atlantic Seaboard, but the influence of it has extended into the Middle West and particularly to what is known as Chicago territory, Mississippi River and Missouri River territory. Substantially all manufactured articles which enter into the uses of life which are manufactured on the Atlantic Seaboard are manufactured in the Middle West and in some of the three territories above named, notably in the Cities of Chicago, St. Louis and Kansas City. Some of the products of the soil produced in the East are also produced in the West. The wholesalers and jobbers of goods, wares and merchandise in the Middle West handle the same commodities which are handled by the wholesalers and jobbers of the Atlantic Seaboard. Therefore the manufacturers, jobbers and wholesalers of the Middle West are in competition in the markets of the United States with the manufacturers, jobbers and wholesalers in the states bordering on the Atlantic Seaboard. Many carriers have their eastern termini in the Middle West and are largely dependent for their westbound carryings on traffic originating in the Middle West. Were these carriers deprived of this traffic or of a very considerable part of it, the result would be that their revenues

would not equal their operating expenses. In order, therefore, to furnish the manufacturers, jobbers and wholesalers of the Middle West with a market at the Pacific Coast terminals and in order to furnish the carriers having their eastern termini in the Middle West and the connecting carriers west of them with takings sufficient to obtain a fair return on their investment, it has been necessary to make rates from the Middle West to Pacific Coast terminals on a parity with the rates made from the Atlantic Seaboard to Pacific Coast terminals. This has led to the making of what is known as the blanket rates to transcontinental territory. The territory north of the Ohio River and east of the Missouri River has been blanketed so that rates on substantially all commodities originating in this territory, no matter where the point of origin is situated within the territory, are the same to the Pacific Coast terminal points. The territory has been blanketed as far west as Colorado common points, including Denver, Pueblo and Trinidad on traffic destined to the California terminals.

Affiant thus explains the method it has been found necessary to adopt in making rates to the Pacific Coast terminals and the method followed in making rates to intermediate points. In order that tariffs may be understood and available to shippers and in order that rates may be just, alike to carriers and the shipping public, it has been found necessary by railways to embrace all commodities carried by them, except coarse and bulky articles, as coal, grain, lumber, etc., into certain classes. A rate is affixed to each class which is a reasonable rate for the movement of the commodities embraced in that class, except as sometimes competition forces the making of a class rate less than reasonable. The principle of thus classifying commodities has been approved by all acquainted with the practice of rate making and has frequently met the

approval of the Interstate Commerce Commission, who have expressed a desire to see a uniform classification in existence over the whole United States. In Western Classification territory, by which is meant that territory west of Chicago and the Mississippi River, commodities are embraced in ten classes; five numbered 1 to 5 inclusive and five lettered from A to E inclusive. The normal rate which should apply and unless there are peculiar circumstances forbidding, does apply to the carriage of commodities embraced in a class is the rate established for that class. Upon normal class rates substantially all commodities which are classified should move to the Pacific Coast terminals. Owing to competition existing there, the class rates were made less than were reasonable for the service rendered, but even on these class rates the rail carriers could not carry the traffic in competition with the water carriers, and it was found necessary from time to time to remove the commodities from the class rates and affix to them specific rates, until at this time there are practically between 3,000 and 3,500 commodity rates from the before mentioned blanketed territory to Pacific Coast terminals. These commodity rates are low water-compelled and are less than reasonable for the services performed by the carriers in handling the traffic, but they have been made as nearly reasonable for such service as the carriers have felt they could make them without driving an undue proportion of the business to the water carriers. Rates to intermediate points have been so far as practicable made reasonable for the service rendered, but this could not be done to all intermediate points because as the Pacific Coast was approached the local rate from the Coast to the intermediate point would make a less rate than was a reasonable rate in itself for the service rendered in the carriage of the freight to that point and the rate had to be made by the terminal rate plus the local rate from

the terminal. But as the territory receded from the Coast the direct effect of the competition of the water diminished and the intermediate rates were as aforesaid made as nearly reasonable as was practicable. The result is that the great bulk of the commodities to intermediate territory moves on class rates. Special circumstances surrounding a commodity, as the peculiar competitive conditions, would at times render necessary the removal of the commodity from the class and the making for it of a specific commodity rate, but yet, as stated, the great majority of the freight moved on the class rates. But under the Commission's order, Fourth Section 124, many commodities to which there is now applied a reasonable class rate, which rate has not been questioned as unreasonable, will have to be removed from the classes and have affixed to them a specific commodity rate based on the terminal rate plus the percentages established by the Commission.

The reasonable rates to this intermediate territory are as a rule much higher than the terminal rates increased by the percentages fixed by the Commission from the several points of origin designated by them. The result, therefore, of the Commission's order will be this: Either the carriers will have to increase the terminal rates to a point that will drive a considerable portion of their present takings from the Atlantic Seaboard to the water carriers or else they will have to reduce their intermediate rates to a point that is less than reasonable for the service rendered. Such reduction will have to be made not only as to the rates which are directly intermediate, but since these rates control the rates to all interior territory the reduction will have to be made on all interior rates. If the terminal rates are raised to such a point as will permit the carriers to obtain reasonable rates to the interior the result will be, as affiant verily believes, that a large portion of

the present takings of the rail carriers will be diverted to the sea, enough to fill the present capacity of the ships plying between the Atlantic ports and the Pacific ports, and that many more vessels between the Atlantic Seaboard and the Pacific Seaboard will be speedily put into commission and the rail carriers at no very distant time be deprived of substantially all their takings from the Atlantic Seaboard to the Pacific Coast terminals. If this result follows the disastrous effect will not be confined to freight originating on the Atlantic Seaboard alone, but as the ocean rate from Atlantic ports to Pacific ports will be much less than the all-rail rate, the Pacific Coast handlers of goods will supply themselves from the Atlantic Coast and the manufacturers, wholesalers and dealers of the Middle West will be deprived of their Pacific Coast markets, or at best their market there will be greatly curtailed and the carriers having their eastern termini in the Middle West will have their takings from this territory greatly lessened.

Affiant says it is impossible to tell how greatly the order of the Commission will reduce the revenues of the carriers. The figures that were compiled and furnished to the carriers were not made on the basis of the last order of the Commission under the fourth section and furnish practically no guide to what the losses will be under the orders now made by the Commission, but the loss will be very much greater than those figures would indicate.

(Signed) J. C. STUBBS.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

Subscribed and sworn to before me this the 26th day of September, 1911.

(Signed) ELPHICK R. EDE,
Notary Public.

(Notarial Seal)

IN THE

United States Commerce Court.

No. 50	No.	No.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	UNION PACIFIC RAILROAD COMPANY et al.	DENVER & RIO GRANDE RAILROAD COMPANY et al.
v.	*v.*	*v.*
UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.

AFFIDAVIT OF H. E. D. JACKSON.

Before the undersigned authority on this day personally appeared H. E. D. Jackson, who, being duly sworn, on his oath says:

I am Traffic Manager of the American-Hawaiian Steamship Company and have been connected with lines making transportation by water for thirty-four years.

In 1869 sailing ships were employed in transporting shipments from the Atlantic ports to the Pacific ports of the United States. These ships were succeeded by steamer lines in the year 1900. In 1899 the American-Hawaiian Steamship Company was incorporated to operate steamships carrying traffic between the Atlantic ports and the American Pacific ports, including Hawaii. These ships began to operate in October, 1900, through the Straits of Magellan. The rates of the sailing vessels were quite low. The first rates made by the steamships were those which had prevailed on the sailing

vessels, but early in 1901, I think it was, the rates were advanced. We first had ready a single steamer of a capacity of 7,500 tons. This steamer was to be ready in September and was expected to sail, carrying this tonnage, but it was delayed until some time in October, and by this time we had secured 12,000 tons of freight and had to charter another steamer in order to carry it to the Pacific Coast. This showed that the business was there and we could get it. Early in 1901 we had another steamer ready and there was quite enough business for it. We then advanced our rates beyond what the sailing rates had been, but still kept them sufficiently low to be attractive. The time of our sailing vessels from New York to San Francisco was 135 days, though occasionally it would be but 108 days. The time of arrival of the sailing ships was uncertain. Marine insurance on their cargoes was 2 per cent., in some companies 2½ per cent. When we started our steamship line the time of service was reduced to sixty days and the marine insurance became 1 per cent., and afterwards was reduced to three-fourths of 1 per cent. These things permitted us to make a better rate than was obtainable by the sailing vessels.

Our takings continued to increase until they reached, in 1906, 115,000 tons from the Atlantic seaboard to the Pacific Coast, including Hawaiian Islands, the very great bulk of it being to the Pacific Coast. In 1906 the Tehuantepec National Railroad, with good terminal facilities at each terminus, was completed across the Isthmus of Tehuantepec. In January, 1907, the American-Hawaiian line abandoned its route through the Straits of Magellan and hauled its freight in its steamships to the eastern terminus of the Tehuantepec road, whence it was transferred by the railway over the isthmus to the western terminus and again loaded into the ships of the American-Hawaiian line and carried to its destinations in United States Pacific Coast ports.

At the present time, our time from New York to San Francisco is thirty days, and we have a ship sailing every six days. Our tonnage has steadily increased, and when the Panama Canal is opened I feel sure it will still very greatly further increase. In the year 1910 our west-bound freight was between 239,000 and 240,000 tons, an increase of 35,000 tons over the preceding year. In testifying before the Interstate Commerce Commission in March, 1911, I was of the opinion that for this year our west-bound takings would be 275,000 tons. Since that time the takings have been such that I now feel sure that they will not be less than 280,000 tons, and think it probable they will run to approximately 300,000 tons. We have every reason to believe that our west-bound takings for the calendar year 1912 will approximate 350,000 tons. When the Panama Canal is completed, I think, with the same steamers we now have we will carry 700,000 tons per annum. At the present time our capacity would be about 300,000 tons, but by reason of not losing time at terminals and the shortening of the time from Atlantic to Pacific ports, I think our takings will be more than doubled, and, of course, as business increases we will build more ships. It is contemplated by the company, if the canal opens by January 1, 1915, that by that time it will have steamships in commission with a carrying capacity of 1,000,000 tons per annum.

Not only have our takings increased, but the takings over the Panama route, the Government line, have increased. That route is actively engaged in commercial business and has increased its takings by making lower rates and an active business campaign. The California Atlantic Steamship Line, popularly known as the Bates & Chesebrough Line, operates between the western terminus of the Panama Railroad and the terminals on the Pacific Coast. It has a traffic agreement for the handling of freight between the Atlantic and the Pacific

211

Coast in connection with the Panama Railroad and the Government steamship line reaching the eastern terminus of that railroad. This line has been a very active competitor for business. The Pacific Mail Steamship Company, operating from the western terminus of the Panama Railroad to San Francisco, also has a traffic agreement with the Government line and is engaged in taking freight between the western terminus of the Panama road and San Francisco. In the last three or four years there has been an increased movement of freight through the Straits of Magellan and also around Cape Horn. The following table shows the movement of freight between Atlantic seaboard ports and American Pacific ports via the water routes, during the periods shown in the table:

Year.	*East-Bound. Tons.*	*West-Bound. Tons.*	*Total. Tons.*
Via Cape Horn and Straits of Magellan.			
1909 Sail and Steam.....	27,488	14,150	41,638
1910 Sail and Steam.....	45,403	44,116	89,519
	72,891	58,266	131,137
Via Panama Lines.			
1906.....	19,621	24,341	43,962
1907.....	17,423	27,053	44,476
1908.....	9,595	24,281	33,876
1909.....	18,710	50,158	68,868
1910.....	55,558	50,370	105,928
1911 (Jan. and Feb.).....	21,340	19,977	41,317
	142,247	196,180	338,427
Via Tehuantepec Route.			
1907.....	16,305	112,395	128,700
1908.....	26,941	117,203	144,144
1909.....	83,200	204,000	287,200
1910.....	59,600	239,500	299,100
1911 (Jan. and Feb.).....	16,000	35,000	51,000
	202,046	708,098	910,144

VIA TRAMP STEAMERS.

Year.	East-Bound. Tons.	West-Bound. Tons.	Total. Tons.
1911 (Jan. and Feb.).....	5,400	3,200	8,600

COMPARATIVE SHOWING OF TONNAGE FOR 1909 AND 1910.

	Via Cape Horn.	Via Panama.	Via Tehuantepec.	Total.
1909 East-bound ..	27,488	18,710	83,200	129,398
West-bound ..	14,150	50,158	204,000	268,308
1910 East-bound ..	45,403	55,558	59,600	160,561
West-bound ..	44,116	50,370	239,500	333,986

Total tonnage for 1909 and 1910, east-bound....289,959 tons
Total tonnage for 1909 and 1910, west-bound....602,294 tons

Grand total.....892,253 tons

(Above does not include any east-bound cargoes of raw sugar or west-bound cargoes of coal.)

My best judgment is that for the year 1911 the total west-bound takings, from the Atlantic seaboard to American Pacific Coast ports, of the American-Hawaiian Line, the Panama route, and of steam and sailing vessels via the Straits of Magellan and around Cape Horn, will amount to 450,000 tons.

Our vessels move practically all commodities that move by rail, there being a few exceptions, such as highly perishable commodities, acids, explosives, refrigerated freight and live stock.

We have a scale of rates and try to adhere to them as closely as possible, but if necessary to obtain the business we vary from them. If we are short of freight and can fill our ships by making a lower rate, we will modify the regular rate so as to complete the cargo. One month we may find it desirable to do this and the next month we would decline to do so. There is no fixed relation between our rates and the rail rates. For

illustration, the rail rate on a certain article may be $3. If at the time I need the freight to complete the cargo, I will make a rate of $2 on that article, and if I need still more will make a rate of $1.50 on it, the same article with the application of the $2 and the $1.50 rates moving in the same cargo.

At one time the transcontinental lines carried practically all of the manufactured tobacco moved from the Atlantic seaboard to the Pacific Coast terminals. I made a rate so low that for about a year I carried all of this tobacco. The rail lines then cut their rates so as to resume the taking of tobacco.

At one time the rail lines carried practically all sewing machines to the Pacific Coast terminals. Time is not important in moving this freight. When the Tehuantepec route was opened the time we then made was entirely satisfactory to the shippers of sewing machines and we obtained practically the entire carriage of this item to Pacific Coast terminals. We held this freight until the close of 1910, when the Panama route cut our rate and commenced to carry a part of the machines, and since that time the machines have been carried by our route and the Panama route.

Other illustrations could be given, but the above will indicate the character of competition between the water lines and the rail lines. Our American-Hawaiian Line also meets with sharp competition from the other water lines.

The American-Hawaiian Line is a close corporation, with few stockholders. The stock is not directly or indirectly owned or controlled by any railroad company of the United States or by the directors or stockholders of such company. It has no traffic arrangement of any kind, directly or indirectly, oral or written, with any such railroad company.

(Signed) H. E. D. Jackson.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Subscribed and sworn to before me this, the twenty-fifth, day of September, 1911.

(Signed) MARION SUMMERS,
Notary Public.

[SEAL.]

IN THE

United States Commerce Court.

THE UNION PACIFIC RAILROAD CO. ET AL., *Petitioners,*
vs.
UNITED STATES OF AMERICA, *Respondent.*

No. 50

ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL., *Petitioners,*
vs.
UNITED STATES OF AMERICA, *Respondent.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

James G. Woodworth, being first duly sworn, deposes and says:

He is now and since January, 1905, has been the Traffic Manager of the Northern Pacific Railway Company. For a period of more than twenty years previous to 1905 he was connected in various capacities with the traffic departments of the railroads now known respectively as the Union Pacific Railroad Company, the Oregon-Washington Railroad & Navigation Company, the Iowa Central Railroad Company and the Chicago, Burlington & Quincy Railroad Company, and he is familiar with the history of transcontinental railroad rates throughout said period of twenty years, and with the methods employed in making them.

The freight rates of the Northern Pacific Railway Com-

216

pany to points in Minnesota, North Dakota, Montana, Idaho, Washington and Oregon, including Pacific Coast terminal points, were originally made from the eastern terminals of that road, and rates from points further east were made by adding the current rates of eastern connecting roads; these rates increased with the distance and were stated according to classes subject to the Western Classification, it being the purpose of the tariffs and the Classification to establish a just and proper relation between all rates according to character of the commodity, quantity shipped (carload or less than carload) and distance carried.

The class rates from eastern territory to Pacific Coast and intermediate points as thus made and as from time to time amended have in general throughout said period of twenty-five years represented standard rates for movement of the various commodities falling within said classes, and each commodity whether moving to Pacific Coast points or to intermediate points has in general moved under the rate of the class to which it belonged, except when and as special circumstances necessitated a specific commodity rate lower than such class rate.

During the entire period of twenty-five years over which affiant's knowledge of the transcontinental rate situation extends, the rail carriers serving the ports on the Pacific Coast have competed with water carriers for the traffic moving thereto from eastern territory, and this competition has been the chief influence compelling the rail carriers to take out of their respective classes the various commodities moving to the Pacific Coast ports, and to make specific commodity rates thereon.

The water carriers with which the rail carriers have throughout said period been obliged to compete, have moved traffic from the Atlantic Seaboard in vessels and steamships

either direct by water around Cape Horn or through the Straits of Magellan to the Pacific Coast ports, or by water to points on the Atlantic Coast of the Isthmuses of Tehuantepec and Panama, whence said traffic was transported by rail to the Pacific Coast of said Isthmuses, moving thence in sailing vessels or steamships to the Pacific Coast ports, and affiant says that the competition between the water carriers and the rail carriers has grown more and more acute, and has extended to practically all kinds and classes of freight, in consequence whereof rail carriers have been compelled to take out of their respective classes, and to make specific rates on nearly all the commodities moving to the Pacific Coast.

The influence of water competition diminishes as the distance from the coast increases, and in consequence the practice of departing from the standard class rate or of taking specific commodities out of their respective classes and making upon each a specific rate lower than the class rate for the movement thereof has prevailed much less at intermediate points than at points on the Pacific Coast.

While the competition of water carriers has been the principal influence compelling the establishment of low commodity rates to points on the Pacific Coast, the fact that the markets of Europe and the Orient have been open to said Pacific Coast ports, and that it has been possible for dealers in said ports to purchase in Europe or the Orient commodities of like character with those obtainable in the United States, and to move the same by the cheap transportation afforded by the water carriers to said Pacific Coast ports has been another influence prompting and compelling the rail carriers to make their rates to said Pacific Coast ports sufficiently low to allow the products of the Atlantic Seaboard and the Middle Western States to compete at said Pacific Coast ports with the products of Europe and the Orient.

The direct competition of water carriers with rail carriers for traffic moving to Pacific Coast ports has been felt only where the traffic originated upon or at points adjacent to the Atlantic Seaboard, but in order to make it possible for the manufacturers and producers of the Middle West to transport their products to said Pacific Coast terminals and sell them in competition with the manufacturers and producers of the Atlantic Seaboard, it has been necessary to make from said markets in the middle west to Pacific Coast ports rates as low as those made by the rail carriers from the Atlantic Seaboard, and in consequence the rates upon which the great bulk of the tonnage to Pacific Coast ports has moved have been what are called blanket rates, so that any given commodity moving to Seattle, Tacoma or Portland would in general move at the same rate whether it originated in and moved from New York, Pittsburgh, Chicago, St. Louis, Omaha or Kansas City.

The rates which the competitive influences aforesaid have compelled the rail carriers to make to Pacific ports have in general been applied only at said ports, and generally speaking the rates upon which traffic has moved to intermediate points have been the class rates, but in all cases where the low commodity rates to the coast plus the local rate eastward from the coast was less to a given intermediate point than the class or commodity rate to said point, such lesser rate was applied so as to give said point the advantage properly belonging to it by reason of its proximity to the ocean.

Affiant further says that existing commodity rates to the Pacific Coast points upon which the great volume of the tonnage moving by rail to said ports has been and is carried as aforesaid, represent the highest rates which in the judgment of the traffic managers of the Transcontinental lines it has been possible for the rail carriers to obtain to said ports in

view of the competitive conditions above described, and it is affiant's belief that if said rates to said Pacific Coast ports were to be advanced to any appreciable extent, it would result in the diversion to the water carriers and the consequent loss to the rail carriers of the greater part of the tonnage now moving over the rail lines to said ports, and that while this result would not be immediate because vessels now available for the carriage of said traffic would not be adequate to the carriage of the whole thereof, such an advance in the judgment of affiant would result in the immediate loss to the rail carriers of a large part of said traffic to said Pacific Coast ports, and in the ultimate loss of practically the whole thereof as soon as vessels could be built and equipped to carry the same.

It has been and is now impossible to meet the above described conditions affecting rates at Pacific Coast terminals with any scale of rates subject to the Western Classification or any other Classification, and in order to make a fitting tariff representing the highest obtainable rates, rail carriers have been obliged to separately state the rates for each commodity shipped to Pacific Coast terminals, providing rates for each carload and less than carload quantities according to prices, freight rates and other conditions governing delivery of the same commodities at the same point by the ocean carriers.

The tariff thus constructed shows seven hundred and sixty-nine different descriptions and rates for carload shipments and nine hundred and twenty-four different descriptions and rates for less than carload shipments covering more than three thousand different articles; said tariff covers more than ninety per cent. of all freight carried by rail from eastern points to Pacific Coast terminal points, the effect being to set aside the Western Classification and substitute therefor

another and entirely different method of differentiating the rates as to commodities and as to quantities shipped according to the peculiar conditions encountered in connection with Pacific Coast business and resulting from the competition of ocean carriers.

In the absence of sufficient justifying reasons to the contrary, the railroads have generally maintained the relation of rates resulting from the use of the Western Classification and the regular scales of class rates, but they have regarded the above described competitive conditions at Pacific Coast points as justifying the above described departure from the usual rule governing the relation of rates on carload quantities and less than carload quantities, and have believed that such departure from established standards when made for the seasons above described should not and would not influence or justify like departures from the rule in connection with business not handled under like conditions.

The order of the Interstate Commerce Commission in connection with opinion number 1627 requires that rates to intermediate points shall not exceed the following named per cents of rates concurrently made to Pacific Coast terminals:

From Zone 1, Missouri River common points territory..100%
From Zone 2, Mississippi River common points territory.107%
From Zone 3, Chicago common points territory.....107%
From Zone 4, Detroit common points territory.....115%
From Zone 5, Pittsburgh common points territory.....115%
From Zone 6, New York common points territory.....125%

Should this order be enforced, proper and reasonable rates to intermediate points could not be maintained without changing the whole plan of the tariff to Pacific Coast terminals and greatly increasing the rates, thus forcing diversion of the business to the ocean carriers as hereinbefore set forth.

Nor would it be possible, without raising Pacific Coast terminal rates, to maintain to Spokane and Spokane common points or intermediate points east of Spokane, the five hundred and forty carload commodity rates and the four hundred and thirty-six less than carload commodity rates which were suggested as just and reasonable rates by the Interstate Commerce Commission in their opinion of June 7, 1910, number 1363, and which rates, with few exceptions, represented the following per cents of the rates now in effect to Pacific Coast terminals:

From Zone 1, Missouri River, etc.....100 %
From Zone 2, Mississippi River, etc.....110 %
From Zone 3, Chicago, etc.....112½%
From Zone 4, Detroit, etc.....118 %
From Zone 5, Pittsburgh, etc.....125 %
From Zone 6, New York, etc.....135 %

To maintain the above mentioned rates to Spokane, etc., under the rule laid down in opinion number 1627 it would be necessary to increase the present Pacific Coast terminal rates to the extent of the following named per cents:

From Zone 1—No advance.
From Zone 2—Two and eight-tenths per cent.
From Zone 3—Five and one-tenth per cent.
From Zone 4—Two and six-tenths per cent.
From Zone 5—Eight and seven-tenths per cent.
From Zone 6—Eight per cent.

The order referred to would also have the effect of setting aside the Western Classification at intermediate points, and substituting another and wholly different method of differentiating the rates according to commodities and quantities to the same extent and in the same manner that such result has followed the use of the commodity tariff at Pacific Coast terminals, as hereinbefore explained.

The conditions which justify and make necessary this departure from the standard freight classification at Pacific Coast terminals do not exist at intermediate points, except at those points which are near the ocean, and then the said conditions exist in lesser degree according to distance from ocean points, and should be met with appropriate commodity rates which would properly measure the varying degree of such ocean competition according to the cost of forwarding the freight from the seaport to the interior points of destination.

The lines of the Northern Pacific Railway Company directly serve the Cities of St. Paul, Minneapolis, Duluth, Superior and Ashland. The said Railway Company has profited greatly from the rapid growth of the manufacturing and distributing business of these cities, and anything which might lessen the ability of their manufacturers and jobbers to sell and ship goods to points on the said company's lines in competition with manufacturers and jobbers located at eastern points whose shipments might be forwarded to the same destination over other lines of railroad, or so routed as to lessen the haul and reduce the earnings of the Northern Pacific Railway Company would impair the earning power and affect the prosperity of the said Railway Company and of the communities which it serves.

The order above referred to would if enforced have the effect of greatly changing the present and long existing relation of rates from the several Eastern territories or zones, which are described in the order, to points in North Dakota, Montana, Idaho, Washington and Oregon; as hereinbefore set forth, the rates now charged on shipments from points in these territories or zones east of the Eastern terminals of the Northern Pacific Railway generally represent the lowest combination of local rates based on rates applied from the said Eastern terminals, and this basis is carried westward from

St. Paul until conditions resulting from Pacific Ocean competition are encountered and exceptions thus made necessary.

The following statement of rates on a typical commodity will illustrate the effect of the said order upon the now existing relation of rates as between St. Paul, Chicago and New York, and consequently the effect upon the ability of the St. Paul jobber or manufacturer to successfully compete with the jobber or manufacturer located at Chicago or New York:

RATES ON CANNED CORN IN CENTS PER HUNDRED POUNDS.

To.....	St. Paul.		Billings.		Butte.		Missoula.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
From New York (present)	46	61	142	178	142	196	147	203
(proposed). . .	46	61	119	178	119	187½	119	187½
From Chicago (present)	20	25	112	142	112	160	117	167
(proposed).	20	25	96	142	96	155	96	155
From St. Paul (present)	..	..	98	117	100	135	105	142
(proposed)	..	..	85	117	85	135	85	140
Reduction from New York	..	..	23	. . .	23	8½	28	15½
Reduction from Chicago.	..	..	16	..	16	5	21	12
Reduction from St. Paul	..	..	13	. . .	15	. . .	20	2

The producer of canned corn in St. Paul or Chicago common points territory would be partially deprived of his natural advantage of location by the making of through rates from eastern sources of supply, which rates would be less than possible combination of locals and less than any generally recognized basis for making through rates less than the combination of locals whether heretofore made by the carriers or by the Interstate Commerce Commission.

The distributer at Chicago or St. Paul of canned corn or other canned goods originating in New York territory would be partially deprived of his natural advantage by reason of

the reduction in the through rate from New York to points in Montana without equal reduction in the rates from St. Paul or Chicago and without any reduction in the rates from New York and common points to Chicago or St. Paul.

Affiant further says that said order of the Interstate Commerce Commission will not only change many rates and disturb a long existing relation of rates on a large part of the freight traffic of the Northern Pacific Railway Company, which traffic is not in any way subject to water competition or any other unusual conditions, but the required rate changes will also lead to further complaints and further readjustments of rates and rate relations which will further decrease the revenues of the Northern Pacific Railway Company.

For many years a fixed relation has generally been maintained between the rates from St. Paul and Missouri River common points to Utah common points, and the rates from Pacific Coast terminals to the said Utah common points; also a fixed relation has likewise been maintained between the rates from St. Paul and Missouri River common points and the rates from Pacific Coast terminals to the said Montana common points. Furthermore, it has generally been the practice to make rates from St. Paul to Billings, Montana, ten per cent. less than rates applied from St. Paul to Butte, and there are many other long established and recognized rules which make all of these rates interdependent to a greater or less extent; therefore, should any change be made in the general basis of rates from Missouri River common points to Utah points or to Montana points, a similar readjustment of rates from Pacific Coast terminals to same points would be demanded, and if carriers should follow the rules heretofore recognized as governing the relation of rates, then any new basis or plan for the making of rates from Missouri River, or from other Eastern territory to points in Montana or points in Utah would ultimately become general in its application.

For this reason it is impossible to anticipate or estimate the effect of rates from Eastern points to points in North Dakota, Montana, Idaho, Washington and Oregon, which would be based upon rates made to Pacific Coast terminals for the purpose of meeting water competition.

At the present time there is no similiarity in the general plan or method of making rates to Pacific Coast terminals where water competition is encountered, and the plan or method of making rates to the intermediate territory where no such conditions exist; and any tariff which would properly meet the conditions in the one locality would not properly meet the conditions in the other locality.

When a number of commodities have been similarly classified in the Western Classification, and when the rates for that class between different points have been for a long time maintained in a given relation, it has been the experience of affiant that the taking out of any article from its given class and the making of a commodity rate upon that article is usually followed by a demand for reduction in the rate on other articles of the same class, and it has also been his experience that if rate reductions are made between any points in territory where the traffic is not subject to unusual or dissimilar conditions, such rate reduction is followed by a general demand for similar rate changes between other points where the same general conditions obtain.

For this reason carriers do not make rate changes without carefully considering the increasing influence of comparisons and precedents, the force of which is much greater in connection with rates made by governmental authority than it is in connection with rates initiated by the carriers.

Affiant further says that the conditions herein described as applying to the Northern Pacific Railway Company and its

business would apply to any other railroad located in the same territory and doing the same kind of business, and this would be especially true of the Great Northern Railway Company, whose principal lines of transportation closely correspond with lines of the Northern Pacific Railway Company, and whose rates to Pacific Coast terminals and to intermediate points are made under conditions and rules the same as those governing rates made by the Northern Pacific Railway Company on similar business as herein set forth.

Further affiant saith not.

(Signed) JAMES G. WOODWORTH.

Subscribed and sworn to before me this 28th day of September, 1911.

(Signed) JOHN A. MCDONALD,
Notary Public.

My commission expires November 15, 1913.

(Notarial Seal)

227

IN THE

United States Commerce Court.

No. 29	No.	No.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	UNION PACIFIC RAILROAD COMPANY et al.	DENVER & RIO GRANDE RAILROAD COMPANY et al.
v.	v.	v.
UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.

Affidavit of G. W. Luce.

Before the undersigned authority on this date personally appeared G. W. Luce, who, being duly sworn, on his oath deposes as follows:

I am assistant to the vice-president of the Southern Pacific Company in charge of traffic and am familiar with the rates for transportation of freight over the lines of that company, whether originating on said lines or coming to it from connecting carriers. I am also familiar with the traffic conditions referred to in the petition in the above styled cause and with the circumstances and conditions which control the making of transcontinental westbound terminal and intermediate rates. I have read the allegations of fact contained in the petition in the above described cause and those allegations are true.

I first became connected with the Southern Pacific Company in 1875 as clerk in its auditing department; in 1883 I entered its traffic department as contracting agent; in 1887 I left the

service of the Southern Pacific Company and became the general agent on the Pacific Coast for the Texas Pacific Railway Company and the other railway companies at that time known as the Gould Lines. I remained in this position until 1891, when I became general agent on the Pacific Coast for the Union Pacific System. I remained in this position until November, 1894, when I returned to the Southern Pacific Company as assistant general freight agent, continuing in that capacity until 1901, when I became general freight agent, and continuing in that position until March, 1911, when I assumed my present position. During all of said period my residence and headquarters have been in San Francisco, California, except from 1898 to 1901, when I was located in Los Angeles, California, and I have been in intimate touch during all said time with the making of rates from other parts of the United States to the Pacific Coast terminals and to intermediate points, and from said terminals eastward to other parts of the United States, and have had intimate knowledge of the forces bringing about the making of such rates.

In order that tariffs may be constructed which are available for use and in order that rates may be understood and equity done in the transportation of traffic, it has been found necessary to classify commodities for carriage. In what is known as Western Classification, which applies in all territory called Western Classification Territory, which lies west of Chicago and the Mississippi River, there are ten classes; five, numbered 1, 2, 3, 4 and 5, and five lettered A, B, C, D and E. In these classes all commodities are grouped except certain coarse articles such as lumber, coal, coke and grain. All traffic moving from any point in Western Classification Territory to Pacific Coast terminals or to intermediate points is governed by Western Classification except as commodities are removed therefrom by the making of commodity rates for rea-

sons hereinafter given. To each class is affixed a class rate applied to the movement of the commodities embraced in that class from any given point of origin to any given destination. These rates are fixed as reasonable for the service performed except as at times competitive conditions force the making of a class rate less than a reasonable rate for such service. It often happens that there are such conditions surrounding a given commodity so that it cannot be moved on a reasonable class rate applied to the class to which it belongs, or even on a reduced class rate which may have been affixed to that class, but in order to move it it becomes necessary to make for it a specific rate lower even than the reduced class rate brought about by competitive conditions and much less than a reasonable rate for the service performed.

Shipments embracing nearly all articles such as are manufactured in the United States are made direct from Europe to Pacific Coast terminals in ocean-going vessels. They also move in such vessels to the east coasts of the Isthmuses of Tehuantepec and Panama, where they are unloaded from the vessels, carried by rail across said isthmuses to the Pacific Coast, there loaded into other vessels and borne to the ports of the United States. Like items of commerce, wherever produced in the United States, have to compete with foreign goods thus imported in finding a market on the Pacific Coast.

Prior to the completion of any railroad making a continuous line of rail communication between the eastern part of the United States and the Pacific Coast, that coast, except as it was furnished by shipments from foreign countries, was supplied by articles of commerce chiefly from the Atlantic Seaboard. This commerce has moved by sailing vessels around Cape Horn. After the completion of a railway across the Isthmus of Panama, about the year 1851, much of it was moved by ship to said isthmus, thence across said isthmus by rail,

when it was again loaded into ships and carried to the Pacific Coast ports. Rail lines were completed across the United States by the connection of the Central Pacific Railway and the Union Pacific Railroad near Ogden, Utah, May 10, 1869. At this time and for some years afterwards, as I know from the history of the times, there was practically no movement of freight by rail.

About October, 1910, the American-Hawaiian Steamship Company, which a short time before had been incorporated, began to operate a line of steamships between the port of New York and Pacific Coast ports through the Straits of Magellan. About the close of the year 1906 a railway was completed across the Isthmus of Tehuantepec, and thereupon, on January 10, 1907, the steamships of the American-Hawaiian Line began to carry freight from the Atlantic Seaboard to the eastern terminus of this railway, whence it was carried by rail over said isthmus to the western terminus of the railway and there loaded again into other steamships of the American-Hawaiian Line and carried to Pacific Coast ports. The United States Government operates a line of steamships from the port of New York to the eastern terminus of the railway of the Government, which railway extends across the Isthmus of Panama, and engages in the carriage of commercial freight. In 1910 a line of steamships, known as the California & Atlantic Steamship Company, was inaugurated and since has been plying from the western terminus of said Panama Railroad to the Pacific Coast ports carrying commercial traffic. There is a line of steamships belonging to the Pacific Mail Steamship Company operating between the western terminus of said Panama Railroad and the City of San Francisco. Between each of these two last named steamship companies and the said Government steamship and railroad company a traffic agreement has been made whereby freight is handled over the water

and rail route thus formed from the Atlantic Seaboard to the Pacific Coast terminals. Tramp vessels also carry traffic from the Atlantic Seaboard to the Pacific Coast. Nearly all articles of commerce which move by rail can be and are moved by vessels, there being some few exceptions, chiefly of articles of a highly perishable nature, acids and explosives.

The transportation of traffic by the water carriers, including therein the carriers which use the transfer service over the Isthmuses of Tehuantepec and Panama, has been constantly increasing and is still increasing and in all human probability will for the future continue to largely increase.

The cost of transportation by water is far less than the cost of transportation by rail. The manufactures and products of the United States whersoever originating come into acute competition in the markets on the Pacific Coast with like products carried there by ocean carriers. Because of the less cost of carriage by the water lines, the rail carriers have been forced to have due regard to the rates of the water carriers and to make rates for carriage over their lines much less than are reasonable for the service rendered.

Substantially all articles of manufacture or commerce produced on the Atlantic Seaboard and contiguous thereto are produced westward thereof and especially in what is known as the Middle West. In this Middle West are many large cities, such as Minneapolis, St. Paul, Chicago, St. Louis, Kansas City and Omaha, producing articles of commerce, competing with like articles produced on the Atlantic Seaboard and contiguous to it, and in these cities and throughout the Middle West are manufacturers, wholesalers and jobbers of all classes of goods, wares and merchandise, who in the markets of the country, and particularly in the markets on the Pacific Coast, are in sharp competition with manufacturers, wholesalers and jobbers in the cities on the Atlantic Sea-

232

board. The rails of many carriers do not extend east of Chicago and the rails of a number of carriers do not extend east of St. Paul, Mississippi River or Missouri River. In order to enable the manufacturers, jobbers and wholesalers of the Middle West to compete in the markets of the Pacific Coast with the manufacturers, wholesalers and jobbers of the Atlantic Coast who have the benefit of water carriage and to meet the compelling force of competition made by the existence of the water at Pacific Coast terminals and in order that the rail carriers whose lines do not extend eastward of the Middle West may obtain the freight from that territory which can competed with the water-borne freight from the Atlantic Seaboard it has been necessary to make rates from the Middle West to Pacific Coast terminals as low as the rates from the Atlantic Seaboard to those terminals, which rates are less than reasonable for the service rendered in the carriage of the freight from the territories of the Middle West, and especially from Chicago territory, Mississippi River territory and Missouri River territory.

At some time prior to the year 1887 the class rates from the City of New York to Pacific Coast terminals were on a scale of $6.00 per 100 pounds, first class, which was graded down to Missouri River. About the year 1886 or 1887 there developed a fierce rate war and all existing class and commodity rates were greatly reduced. After the cessation of that war, by way of compromise, the class rates from New York to Pacific Coast terminals were placed upon a basis of $3 per 100 pounds, first class, graded down to Missouri River. This scale of class rates varied from time to time. During all said time there was a movement of commodities to Pacific Coast terminals on special commodity rates, but for some years prior to 1896 there were some rate wars, numerous contentions among the carriers, dissensions as to divisions and other matters of ar-

gument and difference which rendered the rates unstable, uncertain and frequently inconsistent. About the year 1896 a system of rates was adopted by which the class rates were blanketed from Missouri River to and including the Atlantic Seaboard on a scale of $3, first class, to the Pacific Coast terminals, and at the same time the commodity rates were also blanketed. Classes five to E inclusive in Western Classification are for carload movements. In January, 1909, these rates were removed from the territory east of Chicago. This was because the movement of carload commodities was taken care of by commodity rates and because after the passage of the Hepburn Amendment to the Interstate Commerce Law it was ruled by the Commission that the through published rate was the only rate which could be applied to the carriage of traffic, although it was greater than the sum of intermediate rates. There were a great number of low commodity rates applying from Chicago and west to the Pacific Coast. These applied to the local rate to Chicago made a lower rate than the through published class rate. Though the class rates, induced by water competition, were themselves less than reasonable, the carriers compelled thereto by the competitive forces above described, found it necessary from time to time to increase the number of commodity rates, all less than reasonable for the service rendered, until there are now about 3,300 commodity rates from the above described blanketed territory to the Pacific Coast terminals and about 95% of the traffic from that territory moves on these rates. As the force of water competition decreases as the interior recedes from the coast, rates to intermediate points except such as were situated in such proximity to the coast that the terminal rate plus the local back would make less than a reasonable rate have so far as practicable been made reasonable for the service performed. Nearly all of said 3,300 commodity rates have

been depressed to a figure so much less than a reasonable rate that, except where the terminal rate plus the local rate back to destination brings the rate within the differentials fixed by the Commission, rates to intermediate points, reasonable for the service rendered, will exceed the terminal rates from the respective zones establishd by the Commission by much more than the percentages fixed by it. It hence follows that carriers will have to increase their terminal rates and thus abandon a large part of their terminal business to ocean carriers or else will have to decrease their intermediate rates to a point which will be less than reasonable for the service performed. The decrease of the direct intermediate rates will force a corresponding decrease to all interior points.

The effect of raising the coast rates will not be to immediately force all the traffic to the sea, because the vessels now plying between the Atlantic and Pacific seaboards will not have sufficient capacity to carry all of it, but its effect will be to promptly cause increased steamship facilities and to bring about a continuing decrease of the rail carriers' terminal traffic, and will, as affiant verily believes, ultimately drive it all to the sea if the terminal rates be raised to such point as to make for the carriers reasonable intermediate rates based on the terminal rates plus the differentials fixed by the Commission. When the Panama Canal is opened the effect of competition by the sea and the destructive effect of the raising of the terminal rates to a point such as to secure reasonable intermediate rates by the addition of the differentials fixed by the Commission will, as affiant verily believes, be such as to shut off the western points of manufacture and the western wholesalers and jobbers from markets on the Pacific Coast, including not only terminal points, but points in proximity thereto where the ocean rate plus the local rate will be much less than the all-rail rate.

As illustrating how the orders of the Commission will force the raising of the terminal rates to a point that will either deprive the rail carriers of hauling the terminal traffic or force them to depress the intermediate rates to a point less than reasonable for the service rendered I give this instance: The City of Pittsburg is one of the largest manufacturing centers in the United States of the products of iron. The rail rate on these products from Pittsburg to New York is 15 cents per 100 pounds. The American-Hawaiian Line via the Isthmus of Tehuantepec and the line of the Panama route has a rate on these products of 45 cents, so that if this iron moves by steamship lines it will be carried from Pittsburg to the Pacific Coast at 60 cents per 100 pounds. As a matter of fact, a great deal of this iron does move by these routes. In order to share in the carriage of this commodity, the all-rail lines have made a rate from Pittsburg to Pacific Coast terminals of 80 cents per 100 pounds. If this rate is increased it will drive the carriage of a larger percentage of the iron to the ocean carriers and if it is considerably increased the ocean carriers will carry practically all of this iron to the terminals. This iron is classed as fifth class. This classification is recognized as just and has never been questioned by the Commission or otherwise. The Commission has established a rate from Sacramento to Reno, a distance of 154 miles, of 43 cents for the fifth class, which rate is now in effect. Transportation conditions from Los Angeles to Bakersfield are quite similar to transportation conditions from Sacramento to Reno, and the distance is 169 miles. The rate from Los Angeles to Bakersfield is 44 cents per 100 pounds. Stockton is 229 miles from Bakersfield and the fifth class rate from Stockton to that city is 48 cents per 100 pounds. Traffic from the east moves to Bakersfield through both of these terminals and the rate on the products of iron is made by the through rate to the terminals plus the

fifth class rate from Los Angeles, so that the rate is $1.24 from Pittsburg, which is a just and reasonable rate. If the order of the Commission becomes effective, since Bakersfield is an intermediate point to the terminals, the rate on iron will be reduced to 80 cents from Zone 1, 86 cents from Zone 2, 92 cents from Zone 3 and 100 cents from Zone 4. This illustration is given to make clear the effect of the Commission's order. The same principles apply to nearly all of the commodities carried to the terminals.

As further illustrating the effect of the Commission's order I give the following. About 160 commodity rates are in effect from Utah common points which are even less than just and reasonable rates because forced by competitive influences. But in Case 2662 the Commission reduced these rates and established to Utah common points enough other commodity rates to make the number 207. For the purpose of this illustration these rates, though in truth much less than just and reasonable, are considered just and reasonable. Chicago is 1,492 miles from Ogden; the average distance from the Mississippi River to Ogden is 1,333 miles; the distance of Omaha, a representative Missouri River point, is 1,000 miles from Ogden. In Case 1665 the Commission established class rates to Winnemucca Group and Reno Group which are specially referred to in this affidavit. The following only are here copied:

TO WINNEMUCCA GROUP.

From	1	2	3	4	5	A	B	C	D	E
Omaha	238	206	174	150	126	126	99	79	75	67
Mississippi River	266	230	193	162	136	139	108	86	82	74
Chicago	275	238	199	166	140	143	107	89	85	76
Pittsburg-Buffalo	304	262	218	178	149	144	122	98	91	82
New York	333	286	237	190	159	166	131	105	98	88

TO RENO GROUP.

From	1	2	3	4	5	A	B	C	D	E
Omaha	250	217	183	158	133	133	104	83	79	71
Mississippi River	280	242	203	171	143	146	114	91	86	78
Chicago	290	251	209	175	147	150	118	94	89	80
Pittsburg-Buffalo	320	276	229	187	157	162	128	103	96	86
New York	350	301	249	200	167	175	138	111	103	93

Winnemucca is 365 miles west of Ogden and Reno is 174 miles west of Winnemucca. It is pointed out that in fixing the above rates the Commission recognized the right of the carrier to charge a greater rate to the more distant point. To show how the Commission's Fourth Section Order 124 will affect rates and how unless the terminal rates are raised this order will prevent the carriers from receiving a reasonable rate, I have selected twenty representative commodities from the list of 207 on which commodity rates have been established by the Commission to Utah common points and have prepared the following table, which is explained as follows:

Winnemucca Group includes all stations grouped by the Commission in Case No. 1665, Railroad Commission of Nevada *vs.* Southern Pacific Company *et al.*, to which the same rates apply. The Reno Group is all stations grouped by the Commission to which the same rates apply. A separate column is prepared for Reno itself to show the applications of the rates at that particular point. The column furthest to the right shows rates to San Francisco. The rates shown apply from Chicago Territory, Mississippi River Territory and Missouri River territory.

The three lines of figures reading across the page applying to each commodity from the point of origin are as follows: The first line shows the present rates to Utah common points, to the Winnemucca Group, to the Reno Group, to Reno and to San Francisco. The second line shows the rates which would pre-

vail under the Commission's order to Utah common points, to the Winnemucca Group, to the Reno Group, to Reno and to San Francisco. The average distance is taken to the Winnemucca Group and to the Reno Group, and the third line shows what the rates would be to the Winnemucca Group, to the Reno Group, to Reno and to San Francisco based on the rates fixed by the Commission to Utah common points and allowing an increase of the rates from Ogden as representative of such points westwardly to the Winnemucca Group, to the Reno Group, to Reno and to San Francisco based on the distance:

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
Agricultural Implements; Reapers, etc.	Chicago	Present rate	133	143	150	150	125
		Commission's Order	115	134	134	134	...
		Mileage increase	...	133	149½	156	176
	Mississippi River	Present rate	125½	139	146	146	120
		Commission's Order	110	128	128	128	...
		Mileage increase	...	130	147	155	175
	Missouri River	Present rate	103	126	133	133	120
		Commission's Order	92	120	120	120	...
		Mileage increase	...	114	133	142	165
Bags, Sugar.	Chicago	Present rate	120	145	133	133	90
		Commission's Order	90	96	96	96	...
		Mileage increase	...	104	117	122	138
	Mississippi River	Present rate	115	145	133	133	90
		Commission's Order	86	96	96	96	...
		Mileage increase	...	101½	115	121	137
	Missouri River	Present rate	100	145	133	133	90
		Commission's Order	72	90	90	90	...
		Mileage increase	...	89	104	111	129
Broom Corn	Chicago	Present rate	125	125	125	125	125
		Commission's Order	125	134	134	134	...
		Mileage increase	...	145½	162½	170	191
	Mississippi River	Present rate	115	125	125	125	125
		Commission's Order	120	134	134	134	...
		Mileage increase	...	142	161	169	191
	Missouri River	Present rate	93	125	125	125	125
		Commission's Order	100	125	125	125	...
		Mileage increase	...	124	145	154	179

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
Glass: Common Window.	Chicago	Present rate	120	140	133	133	90
		Commission's Order	90	96	96	96	...
		Mileage increase	...	104	117	122	138
	Mississippi River	Present rate	115	136	133	133	90
		Commission's Order	86	96	96	96	...
		Mileage increase	...	101½	115	121	137
	Missouri River	Present rate	93	126	133	133	90
		Commission's Order	72	90	90	90	...
		Mileage increase	...	89	104	111	129
Canned Corn	Chicago	Present rate	100	140	133	133	90
		Commission's Order	90	96	96	96	...
		Mileage increase	...	104	117	122	138
	Mississippi River	Present rate	95	136	133	133	90
		Commission's Order	86	96	96	96	...
		Mileage increase	...	101½	115	121	137
	Missouri River	Present rate	73	126	128	128	85
		Commission's Order	72	85	85	85	...
		Mileage increase	...	89	104	111	129
Chimneys: Glass, Lamp	Chicago	Present rate	180	199	209	209	150
		Commission's Order	150	160½	160½	160½	...
		Mileage increase	...	174	195	204	229½
	Mississippi River	Present rate	170	193	203	203	150
		Commission's Order	144	160½	160½	160½	...
		Mileage increase	...	170	193	203	229
	Missouri River	Present rate	135	174	183	183	150
		Commission's Order	120	150	150	150	...
		Mileage increase	...	149	174	185	215
Chocolate and Cocoa	Chicago	Present rate	220	221	196	196	125
		Commission's Order	125	134	134	134	...
		Mileage increase	...	145½	162½	170	191
	Mississippi River	Present rate	210	221	196	196	125
		Commission's Order	120	134	134	134	...
		Mileage increase	...	142	161	169	191
	Missouri River	Present rate	175	206	196	196	125
		Commission's Order	100	125	125	125	...
		Mileage increase	...	124	145	154	179

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
Glucose	Chicago	Present rate	91	130	118	118	75
		Commission's Order	65	80	80	80	...
		Mileage increase	...	75	84½	88	99½
	Mississippi River	Present rate	86	130	118	118	75
		Commission's Order	62	80	80	80	...
		Mileage increase	...	73	83	87	99
	Missouri River	Present rate	68½	126	118	118	75
		Commission's Order	52	75	75	75	...
		Mileage increase	...	64½	75½	80	93
Incubators and Brooders	Chicago	Present rate	236	231	206	206	135
		Commission's Order	135	144½	144½	144½	...
		Mileage increase	...	157	175½	184	206½
	Mississippi River	Present rate	216	230	206	206	135
		Commission's Order	130	144½	144½	144½	...
		Mileage increase	...	153	174	183	207
	Missouri River	Present rate	171	206	206	206	135
		Commission's Order	108	135	135	135	...
		Mileage increase	...	134	157	166	193
Iron: Bolts, Nuts, etc.	Chicago	Present rate	110	137½	123	123	80
		Commission's Order	80	86	86	86	...
		Mileage increase	...	93	104	109	122
	Mississippi River	Present rate	105	136	123	123	80
		Commission's Order	77	86	86	86	...
		Mileage increase	...	91	103	108½	122
	Missouri River	Present rate	83	126	123	123	80
		Commission's Order	64	80	80	80	...
		Mileage increase	...	79	93	98½	114½
Iron: Cast Pipe	Chicago	Present rate	95	122½	108	108	65
		Commission's Order	60	70	70	70	...
		Mileage increase	...	70	78	82	92
	Mississippi River	Present rate	90	122½	108	108	65
		Commission's Order	58	70	70	70	...
		Mileage increase	...	68	78	82	92
	Missouri River	Present rate	80	122½	108	108	65
		Commission's Order	48	65	65	65	...
		Mileage increase	...	59½	70	74	86

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
Iron: Horse Shoes, etc.	Chicago	Present rate	110	140	128	128	85
		Commission's Order	70	91	91	91	...
		Mileage increase	...	81	91	95	107
	Mississippi River	Present rate	105	136	128	128	85
		Commission's Order	67	91	91	91	...
		Mileage increase	...	79	90	94½	106½
	Missouri River	Present rate	83	126	128	128	85
		Commission's Order	56	85	85	85	...
		Mileage increase	...	69	81	86	100
Linoleum	Chicago	Present rate	135	182½	164	164	100
		Commission's Order	100	107	107	107	...
		Mileage increase	...	116	130	136	153
	Mississippi River	Present rate	130	182½	164	164	100
		Commission's Order	96	107	107	107	...
		Mileage increase	...	113	129	135	153
	Missouri River	Present rate	108	174	164	164	100
		Commission's Order	80	100	100	100	...
		Mileage increase	...	99	116	123	143
Matches	Chicago	Present rate	121	166	161	161	110
		Commission's Order	110	118	118	118	...
		Mileage increase	...	128	143	150	168
	Mississippi River	Present rate	116	162	161	161	110
		Commission's Order	106	118	118	118	...
		Mileage increase	...	125	142	149½	168½
	Missouri River	Present rate	89	150	158	158	110
		Commission's Order	88	110	110	110	...
		Mileage increase	...	109	128	135½	157½
Nails	Chicago	Present rate	110	127½	113	113	70
		Commission's Order	70	75	75	75	...
		Mileage increase	...	81	91	95	107
	Mississippi River	Present rate	105	127½	113	113	70
		Commission's Order	67	75	75	75	...
		Mileage increase	...	79	90	94½	106½
	Missouri River	Present rate	83	126	113	113	70
		Commission's Order	56	70	70	70	...
		Mileage increase	...	69	81	86	100

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
	Chicago	Present Rate	170	199	209	209	150
		Commission's Order	150	160½	160½	160½	...
		Mileage increase	...	174	195	204	229½
Nuts, Edible, N. O. S.	Mississippi River	Present rate	160	193	203	203	150
		Commission's Order	144	160½	160½	160½	...
		Mileage increase	...	170	193	203	229
	Missouri River	Present rate	125	174	183	183	150
		Commission's Order	120	150	150	150	...
		Mileage increase	...	149	174	185	215
	Chicago	Present rate	110	137½	123	123	80
		Commission's Order	80	86	86	86	...
		Mileage increase	...	93	104	109	122
Soap	Mississippi River	Present Rate	105	136	123	123	80
		Commission's Order	77	86	86	86	...
		Mileage increase	...	91	103	108½	122
	Missouri River	Present Rate	84	126	123	123	80
		Commission's Order	64	80	80	80	...
		Mileage increase	...	79	93	98½	114½
	Chicago	Present rate	121	132½	118	118	75
		Commission's Order	75	80	80	80	...
		Mileage increase	...	87	97½	102	115
Shot	Mississippi River	Present rate	116	132½	118	118	75
		Commission's Order	72	80	80	80	...
		Mileage increase	...	85	96½	101½	114½
	Missouri River	Present rate	106	126	118	118	75
		Commission's Order	60	75	75	75	...
		Mileage increase	...	74	87	92	107
	Chicago	Present rate	124	140	143	143	100
		Commission's Order	100	107	107	107	...
		Mileage increase	...	116	130	136	153
Starch	Mississippi River	Present rate	119	136	143	143	100
		Commission's Order	96	107	107	107	...
		Mileage increase	...	113	129	135	153
	Missouri River	Present rate	106	126	133	133	100
		Commission's Order	80	100	100	100	...
		Mileage increase	...	99	116	123	143

Commodity	From	Basis	Utah Common Points	Winnemucca Group	Reno Group	Reno	San Francisco
Zinc, Sheet	Chicago	Present rate	129	140	147	147	125
		Commission's Order	125	134	134	134	...
		Mileage increase	...	145½	162½	170	191
	Mississippi River	Present rate	124	136	143	143	125
		Commission's Order	120	134	134	134	...
		Mileage increase	...	142	161	169	191
	Missouri River	Present rate	106	126	133	133	125
		Commission's Order	100	125	125	125	...
		Mileage increase	...	124	145	154	179

BASIS.

	Chicago	Mississippi River	Missouri River
Chicago, Milwaukee & St. Paul Railway (Savannah)	492 miles	354 miles	
Chicago & North Western Railway (Clinton)	492	354	
Chicago, Burlington & Quincy Railroad (Burlington)	496	290	
Union Pacific Railroad (Omaha to Ogden)			1000 miles
AVERAGE	494	333	

Ogden to Nevada-Utah State Line ..... 111 miles
Ogden to Winnemucca 367
AVERAGE ..... 239 miles to Winnemucca Group
Ogden to Winnemucca ..... 367 miles
Ogden to Reno 541
AVERAGE ..... 454 miles to Reno Group
Ogden to San Francisco ..... 786 miles

PERCENTAGES OF INCREASE

Winnemucca Group:	
Chicago	16%
Mississippi River	18%
Missouri River	24%
Reno Group:	
Chicago	30%
Mississippi River	34%
Missouri River	45%
Reno:	
Chicago	36%
Mississippi River	41%
Missouri River	54%
San Francisco:	
Chicago	53%
Mississippi River	59%
Missouri River	79%

An inspection of the figures show that upon the basis of the Commission's findings the carriers are entitled to charge higher rates west of Ogden than they can possibly charge under the Commission's order unless the terminal rates are raised. They also show what would be a reasonable rate in itself to San Francisco based on the rates which have been established by the Commission to Utah common points and indicate how much less than a reasonable rate carriers have been compelled by competitive conditions to make at terminal points. They show that unless the carriers raise the terminal rates they must accept much less than a reasonable rate to the Winnemucca Group, the Reno Group and to Reno proper, and that they must forego increasing the rate for any appreciable distance west of Ogden and blanket the territory from a short distance west of that city to the Pacific Ocean. If there ought not to be a constant mileage increase as above made it is obvious, not to be denied, and recognized by the Commission, that there should be a reasonable and fair increase as the length of the haul increases. Only twenty commodities have been selected because to take a larger number would extend this affidavit to very great length. The commodities which have been selected more actively and the same principles and facts which are shown in the analysis of the rates applying to these apply to all the commodities involved, and while the illustration is confined to Utah common points and west, because only to Utah common points has the Commission recently established any commodity rates to the territories involved, the principles and facts will apply to the Spokane Case No. 879, the Phoenix Case No. 1796, and, indeed, to all the territory embraced in the Commission's Fourth Section Order.

(Signed) G. W. Luce.

Subscribed and sworn to before me this the twenty-third day of September, 1911.

William A. Rawson,
Notary Public.

[seal]

IN THE

United States Commerce Court.

No. 50	No.	No.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	UNION PACIFIC RAILROAD COMPANY et al.	DENVER & RIO GRANDE RAILROAD COMPANY et al.
v.	v.	v.
UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.

AFFIDAVIT OF F. H. PLAISTED.

Before the undersigned authority on this day personally appeared F. H. Plaisted, who, being duly sworn, on his oath deposes and says:

I am Assistant General Freight Agent of the Oregon Short Line Railroad and have been connected with that railroad since 1889. At that time it was called the Oregon Short Line & Utah Northern and was practically amalgamated with the Union Pacific Railroad for all operating and traffic purposes. During all my service with said railroad company I have been connected with the General Freight Department and have held the position I now occupy since 1905. I have intimate knowledge of the making of rates to and from points on the Oregon Short Line, including rates from Chicago, Mississippi River territory and Missouri River territory to Utah common points. My position with the Oregon Short Line in the conduct of its business necessitates my keeping in somewhat close touch

with transcontinental rates, and I have considerable familiarity with those rates, the forces which call them into being and the method by which they are made.

I have read the affidavit of G. W. Luce filed in this cause and know the allegations of fact therein contained to be true. The rates to Pacific Coast terminals have been made because of the compelling force of water competition as explained in the affidavit of said Luce. The necessity of furnishing manufacturers, producers and wholesalers in the Middle West access to markets on the Pacific Coast in competition with the manufacturers, producers and wholesalers of like classes of goods on the Atlantic Seaboard who have the benefit of water competition from said Atlantic Seaboard to the Pacific Coast ports, and the necessities of the carriers serving the Middle West to obtain the carriage of products manufactured and produced and handled there in competition with like products manufactured, produced and handled on the Atlantic seaboard have forced the making of the same rates from the Middle West to Pacific Coast terminals. It hence follows that the same rates have been made from Chicago territory, from Mississippi River territory and from Missouri River territory to Pacific Coast terminals that were made from the Atlantic Seaboard to the same terminals.

Receding toward the interior from the Pacific Ocean the effect of water competition diminishes until it is finally lost. In immediate proximity to the coast it is necessary to make a rate which is equal to the terminal rate plus the local rate to the destination near the coast, but as the force of water competition diminishes this necessity is obviated and the carrier can, when the effect of water competition approaches a minimum, make a rate which is reasonable in itself for the service rendered. In this way the carriers established their rates to Utah common points on the following principles:

In building a freight tariff it is necessary to provide rates on thousands of articles and between hundreds of points where goods are received and shipped. The practical method of accomplishing this object and providing a tariff of rates which will be readily available, easily understood and do justice to the shippers of the various kinds of traffic is, first, to classify the articles offered for transportation according to bulk, weight, value, risk, method of packing, etc., and, having separated them and assigned each to a class giving it a fair relation to other articles making up the traffic, to then establish class rates, reasonable in themselves, bearing reasonable relation to each other, and graded at various stations covered by the tariff so as to produce a reasonable relation of rates to the various localities. The classification and the class rates so adjusted form the groundwork and foundation of the tariff. This has been found by carriers to be the only practicable way of fixing rates generally and has met the approval of the Commission, and this is the method used to Utah.

In Western Classification territory, by which is meant territory west of Chicago and the Mississippi River, and hence includes Chicago territory, Mississippi River territory and Missouri River territory, all commodities except certain coarse and bulky articles, as, for example, coal, coke, salt and lumber, have been embraced in ten classes, being five numbered 1, 2, 3, 4 and 5, and five lettered A, B, C, D and E. Under these classes, with exceptions such as are above named, have been included all commodities.

When an article of commerce is placed in a given class, the rate which is affixed to that class is the normal rate for that article, the rate reasonable in itself for the service performed, and the one on which the article ordinarily moves. The classification, however, covers a wide scope of territory and different conditions in various sections of this territory

have compelled the carriers from time to time to make certain exceptions to the classification adapted to local needs. This is accomplished either, first, by taking the article out of the class to which it has been assigned and under which it would be charged the normal and reasonable rate, and applying to it the rate for a lower class; or, second, by publishing a special commodity rate for that article, lower than the class rate. In either case the rate so produced is lower than the normal and reasonable rate, but is forced upon the carrier by conditions which make it a necessity.

As explained in Mr. Luce's affidavit above referred to, water competition at the Pacific Coast was so strong and compelling that it was necessary for the carriers to remove the great bulk of articles carried to the Pacific Coast terminals from the class rates and affix to them specific commodity rates far less than the reasonable class rates, so that there are now between 3,000 and 3,500 commodity rates carried in the Pacific Coast tariff and probably 95 per cent. of the business moving from Chicago territory, Mississippi River territory and Missouri River territory to the Pacific Coast terminals moves on these specific commodity rates.

At Utah common points, nearly 800 miles inland, the same influences and conditions do not exist and the rate structure there has been established by the carriers with regard largely to the local situation confronting them and the communities and shippers served, rather than to other conditions existing 800 miles away. The competition of the ocean carriers and of producers and shippers served by the ocean carriers is not felt in Utah, or, if at all, to a very remote degree. There have been conditions in Utah compelling some departure from the class rates, although to a much less extent than on the coast. Some of the circumstances leading to the establish-

ment of commodity rates lower than the class rates, not only to Utah territory now under consideration, but to local territory of the Oregon Short Line Railroad beyond Utah common points, are the following:

On emigrant movables and household goods, to stimulate immigration and settlement.

On raw materials, to build up local manufacturing.

On building materials of many kinds, to encourage construction.

On machinery, to promote industries, such as mining, one of the largest in the intermountain country.

On certain food stuffs which must be brought from a distance and enter largely into the cost of living of the people.

On many and various articles under pressure of connecting carriers and producers elsewhere competing from different directions for a market in western territory.

On various articles jobbed from Utah cities, to facilitate distribution to surrounding territories.

At the time of the institution of the proceedings of the Commercial Club Traffic Bureau of Salt Lake City, named in the petition in this cause, there had been established in the tariff about 225 commodity items, making about 160 commodity rates westbound from Missouri River, Mississippi River and Chicago territories to Utah common points. Other articles moving from said territories to Utah common points paid the class rates. These class rates from Missouri River territory to Utah common points were established as just and reasonable rates in themselves for the service performed. The rates from Mississippi River territory and Chicago territory were the combination of the locals on Missouri River and were established as just and reasonable rates in themselves. But

though these rates were just and reasonable for the service performed in moving the commodities under them, the carriers, by reason of peculiar circumstances surrounding the said 160 commodities, established for them specific commodity rates which were less than reasonable for the service performed.

When, as has occurred before and as may occur hereafter, the growth of the traffic justifies the lowering of the general level of the tariff to an extent consistent with fairness both to the carriers and their patrons, it should be accomplished as it has heretofore been accomplished, by establishing a new scale of class rates considered reasonable in themselves, and then canceling from the tariff such commodity rates as are found to be no lower than the newly established class rates. The commodity rates themselves, made for special reasons in the first place lower than the normal and reasonable rates, should not be made still lower. Where there are in the tariff one or more commodity rates, the reasonableness of which is challenged, they should be reduced only after investigation as to the reasonableness of each specific rate. In this instance it appears that the Commission, without making such inquiry as to the intrinsic reasonableness of each commodity rate, took the low, water-forced terminal rates as the measure of what the commodity rates from Missouri River, Mississippi River and Chicago territories to Utah common points should be, proceeding as follows:

To arrive at the rate from Missouri River to Utah common points the Commission used as a basis 80 per cent. of the Missouri River-Coast rate. To fix the rate from Mississippi River they took 20 per cent. over the rate fixed from Missouri River to Utah common points, and to arrive at the Chicago rate they took 25 per cent. over the rate from Missouri River

to Utah common points. This was substantially the same as taking 80 per cent. of the terminal rate from Missouri River as the rate from Missouri River to Utah common points, 96 per cent. of the said terminal rate from Missouri River as the rate from Mississippi River to Utah common points, and the said terminal rate from Missouri River itself as the rate from Chicago to Utah common points.

In June, 1911, the Commission followed their opinion in case No. 2662 by an order, by which class rates are established to Utah common points less than the class rates established by the carriers and, as affiant avers and believes, less than reasonable, but which are established by the Commission as rates reasonable in themselves. Notwithstanding such class rates ordered by the Commission as reasonable in themselves, and by them treated as reasonable rates, yet the Commission go further and order some 208 commodity rates, lower than their said reasonable class rates and obtained by using fixed percentages of the water-forced terminal commodity rates as above described.

Affiant attaches hereto a list of twenty representative commodities. This list shows the classes to which such commodities belong, the class rates which have been ordered by the Commission, the commodity rates which were established by the carriers and the commodity rates which have been ordered by the Commission. From this it will be seen that in many instances the commodity rates established by the carriers are less than the class rates which have been ordered by the Commission as just and reasonable, and that the Commission, irrespective of the fact that the carriers' commodity rates are less than their own class rates, have further reduced the commodity rates to the percentages of the terminal rates adopted by them as the measure of the commodity rates. The facts

and principles here shown apply substantially to the remainder of the commodity rates established by the Commission.

Affiant says that to obey the order of the Commission will greatly disturb commercial conditions and entail a great loss of revenue on the carriers; that a fair relation must be maintained between the rates to Salt Lake City and the rates to other points in Utah and surrounding states; that if the rates established by the Commission to Utah are permitted to stand, rates to these other points must be correspondingly reduced. The different sections of Utah, Idaho and Montana bear a much closer relation to each other than any of them bear to the Pacific Coast and discrimination there in favor of one section and against others would be much more serious and real than any theoretical discrimination as between the Pacific Coast and the interior, which these orders seek to remove. The carriers cannot ignore the relation of territories in the intermountain region, and were they to endeavor to do so the Commission would doubtless not permit it. The rates here ordered to a few points in Utah will inevitably force corresponding reductions over a wide scope of territory, which reductions did not and could not figure in the statement of losses prepared for the Commission by the Railroad Auditors.

Affiant further says that there are many territories the rates from which to Utah and to the other intermountain states bear a fixed relation to the rates from Chicago, Mississippi River and Missouri River to such states. He cites Memphis territory, taking Chicago rates; Peoria territory, taking Chicago rates; St. Paul and Duluth territories, taking Chicago rates; Colorado, California, Oregon and Washington territories, taking a percentage of Missouri River rates; all of which must be revised in line with the adjustment now established. The carriers cannot escape it.

Affiant further says that many other commodities not covered by the order will in the end have to be revised to correspond with the basis here prescribed, also that the loss shown by auditors' figures on the commodities covered by the order serves as no guide for the loss which will accrue under the present orders, because proposed rates under one set of rules, groupings, minimum weights, etc., cannot be applied to business which has already moved under different rules, groupings, minimum weights, etc., with anything like accurate results. For these reasons affiant states as a matter of personal knowledge that the loss to the Oregon Short Line Railroad Company under these rates when they are all actually in effect will very greatly exceed the loss shown in the said auditor's statement.

Affiant further says that there are certain manufacturing industries in Utah which will be embarrassed if not seriously crippled by drastic reductions in freight rates. He cites as examples, the canners of condensed milk, of fruit and of vegetables, the pickle manufacturers, building paper manufacturers, mattress manufacturers, etc. Affiant recognizes that these local Utah industries have no right to have market territory preserved to them by prohibitive or unreasonable rates, but believes and avers that they have the right to insist that their competitors' rates shall not be reduced unreasonably and that when they are reduced it shall be done gradually so as to permit them to accommodate their business to the changes with a minimum of loss. Capital has been invested in these local industries under the rates as they are and the faith that they would not be suddenly or radically changed—

a faith which was justified and which should not in good conscience be disregarded.

(Signed) F. H. PLAISTED.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

Subscribed and sworn to before me this twenty-seventh day of September, 1911.

(Signed) WILLIAM A. RAWSON,
Notary Public.

Notarial Seal

COMMODITY—	Classification (Western)	Railroad Class Rates			Railroad Commodity Rates			Commission's Commodity Rates			Commission's Class Rates		
		Chgo.	Miss. Riv.	Mo. Riv.	Chgo.	Miss. Riv.	Mo. Riv.	Chgo.	Miss. Riv.	Mo. Riv.	Chgo.	Miss. Riv.	Mo. Riv.
Agricultural Implements, Reapers, etc.	A	138	130½	106	133	125½	103	115	110	92	115	111	98
Bags, Sugar	3	198	188	153	120	115	100	90	86	72	172	163	142
Broom Corn	3	198	188	153	125	115	93	125	120	100	172	163	142
Glass, Common Window	5	133	128	106	120	115	93	90	86	72	115	111	98
Canned Corn	5	133	128	106	100	95	73	90	86	72	115	111	98
Chimneys, Lamp	3	198	188	153	180	170	135	150	144	120	172	163	142
Chocolate and Cocoa	2	240	220	175	220	210	†	125	120	100	207	189	162
Glucose	5	133	128	106	91	86	68½	65	62	52	115	111	98
Iron, Bolts, Nuts, etc.	5	133	128	106	110	105	83	80	77	64	115	111	98
Iron, Cast, Pipe	5	133	128	106	95	90	80	60	58	48	115	111	98
Iron, Horse Shoes, etc.	5	133	128	106	110	105	83	70	67	56	115	111	98
Oil Cloth (floor), etc.	3	198	188	153	142	137	110	100	96	80	172	163	142
Matches	4	160	155	128	121	116	89	110	106	88	139	134	119
Nails	5	133	128	106	110	105	83	70	67	56	115	111	98
Nuts, Edible, N. O. S.	3	198	188	153	170	160	125	150	144	120	172	163	142
Shot	5	133	128	106	121	116	†	75	72	60	115	111	98
Soap and Soap Powder	5	133	128	106	110	105	84	80	77	64	115	111	98
Starch	5	133	128	106	124	119	†	100	96	80	115	111	98
Zinc, Sheet	5	133	128	106	*129	124	†	125	120	100	115	111	98
Zinc Slab	5	133	128	106	*129	124	†	75	72	60	115	111	98

*Straight or mixed.
†Class Rates Apply.

IN THE

United States Commerce Court.

No. 57	No.	No.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	UNION PACIFIC RAILROAD COMPANY et al.	DENVER & RIO GRANDE RAILROAD COMPANY et al.
v.	*v.*	*v.*
UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.	UNITED STATES OF AMERICA.

AFFIDAVIT OF J. A. MUNROE.

Before the undersigned authority on this day personally appeared J. A. Munroe, who, being duly sworn, on his oath says:

I am Freight Traffic Manager of the Union Pacific Railroad Company and have been connected with that road for upwards of twenty-five years. I am familiar with the conditions attending transcontinental traffic and traffic in the intermountain country. I have been closely associated with the making of rates on the line of the Union Pacific Railroad and its connections to the West and know the principles upon which those rates are made, and I believe I can foretell with a considerable degree of accuracy the results that will follow from any radical change in the rates. I have read the affidavit of Mr. G. W. Luce, filed in this cause, and concur in the statement of facts contained therein.

Referring to those facts, it is evident that the carriers can-

not maintain the present terminal rates and at the same time obtain reasonable rates to interior points based on the percentages fixed by the Commission. The only course that is left to them is to either raise the terminal rates or accept less than a reasonable rate for the service rendered in carrying the traffic to interior points, all of which is more fully explained in the affidavits filed in this cause, to which I make reference without detailing the facts which will lead to this result.

If the terminal rates are raised it will tend to drive the traffic from the rail carriers to the water carriers, and as there is an increase in the raise of those rates, this effect will become greater. If the rates are not raised, the carriers, by fixing intermediate rates on the percentages established by the Commission, will have to carry the traffic at less than reasonable compensation for the service rendered, so that in either event the revenue loss to the carriers will be very material. In addition to the facts and illustrations given by Mr. Luce as pointing out how, based on the present terminal rates, the percentages fixed by the Commission will not permit of the obtaining of a reasonable rate for the service rendered to intermediate points. I give the following: The present rate from Chicago to the terminals is $1.00 on cotton duck, denims, drills, sheeting and bagging. The rate which has been established by the Commission to Utah common points on these articles is $1.10, whereas the percentage fixed by the Commission will make the rate $1.07. The rate on sole leather from Chicago to California terminals is $1.15. The rate established by the Commission to Utah common points on this item is $1.25, whereas the rate based on their percentage would be $1.23. The present rate on oil cake from Chicago to Pacific Coast terminals is 60 cents. The rate allowed by the Commission as reasonable to Utah common points is 75 cents, whereas a rate fixed on their percentage would be 64.2 cents. The basis

257

which the Commission used for making their rates from Missouri River, Mississippi River and Chicago to Utah common points was the Missouri-River-Coast rate, but in some instances the Coast rate slightly varied to the California terminals as compared with the Oregon-Washington terminals, and there may be some slight changes in the Coast rate since the Commission has made its tentative order in the Salt Lake case, later adopted as their final order. These things may have led to the discrepancies above shown, but the discrepancies show the impracticability of basing an interior rate, uninfluenced by water competition, which should be reasonable in itself for the service rendered, upon the water compelled terminal rate and indicate how an endeavor to establish any percentage relation between the terminal rate and the intermediate rate results in injustice to the carriers and will call for the fixing of a rate so high at the terminals as to divert traffic from the rail to the water carriers or deprive the carriers of a reasonable rate to the interior for the service rendered.

(Signed) J. A. MUNROE.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

Subscribed and sworn to before me this the twenty-seventh day of September, 1911.

(Signed) WM. A. RAWSON,
Notary Public.

(Notarial Seal)

IN THE

United States Commerce Court.

THE UNION PACIFIC RAILROAD CO. ET AL., *Petitioners,*
vs.
UNITED STATES OF AMERICA, *Respondent.*

ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL., *Petitioners,*
vs.
UNITED STATES OF AMERICA, *Respondent.*

STATE OF MINNESOTA, } ss.
COUNTY OF RAMSEY, }

Frederick H. Parker, being first duly sworn, on oath deposes and says that he is the Assistant Comptroller of the Great Northern Railway Company and has been since June 1, 1911; that for over eight (8) years prior thereto he was Auditor Freight Receipts of said Company; that during the years 1910 and 1911, in connection with Will H. Carlton, an Examiner of the Interstate Commerce Commission, he supervised the preparation of a statement covering the months of October, 1909; January, April and July, 1910, showing (a) the revenues received by participating carriers from the transportation of the traffic that would be effected by the rates suggested in the opinions of the Interstate Commerce Commission numbered 1363, 1368 and 1364, and in which traffic

259

the Great Northern Railway Company participated, except so much of such traffic so affected as was destined to points on the Spokane, Portland & Seattle Railway, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad and the Southern Pacific Company; (b) the revenue which would have accrued to the participating carriers had they charged for the transportation of said traffic rates in accordance with those suggested in said opinions above numbered. Affiant further says that said statement was prepared from the original records of the Great Northern Railway Company in accordance with the directions of the Interstate Commerce Commission and in compliance with said above numbered opinions; that said statement comprised more than 220 printed pages, thirteen (13) by twenty and one-half (20½) inches in size, and required in the preparation thereof the services of about thirty-three (33) employes and substantially seven (7) months' time; that said statement showed that had the participating carriers carried the traffic therein referred to upon the rates suggested by the Commission in said above numbered opinions and upon rates which would have been thereby impelled, their revenue would have been $214,651.64 less than the revenue actually received by them for the transportation of said traffic.

Assuming the above mentioned four months to be representative months, the annual loss which the participating carriers would have sustained by the application of the rates (and rates impelled thereby) suggested in said opinions would have aggregated $640,000.00, in round figures; that substantially the whole of said loss would have fallen upon the Great Northern Railway Company provided the present relative bases of division had obtained as between the participating carriers.

Affiant further says that the Commission, in fixing the rates from St. Paul to Spokane as suggested in opinion number 1363, took in general as the bases thereof the then existing St. Paul-Pacific Coast terminal rates; that the rates prescribed from Chicago territory (Zone No. 2) to Spokane were in general 112½ per cent.; from Pittsburg territory (Zone No. 3) to Spokane, in general, 125 per cent., and from New York territory (Zone No. 4) to Spokane, 135 per cent. of the then existing St. Paul-Pacific Coast terminal rates.

Affiant further says that if the carriers should comply with the order of the Commission of June 22, 1911, in Commission case No. 879, by lowering the rates to Spokane and intermediate points, so that they would bear to the Pacific Coast terminal rates the relations prescribed in said order of June 22, 1911, the rates from Zones 2, 3 and 4 as described in said order to Spokane and other intermediate points would be considerably less than the rates suggested by said Commission in its report of June 7, 1910, in case No. 879. In addition to the further reduction in the rates that would thus be effected by such compliance with the order of June 22, 1911, upon the commodities mentioned in the report of June 7, 1910, a reduction in rates to Spokane and other intermediate points would obtain upon a large number of other commodities now moving to the Pacific Coast terminals upon commodity rates and which are not mentioned in the order of June 7, 1910. While it is impossible for affiant to state how much the loss to the Great Northern Railway Company resulting from such a compliance with the order of June 22, 1911, would exceed the loss to it as shown by the statement prepared in accordance with the report of the Commission of June 7, 1910, it is certain that said loss to the Great Northern Railway Company would be considerably greater under the order of June 22, 1911, thus

complied with than it would be under the rates as suggested in the opinions of the Commission above numbered.

Further affiant saith not.

(Signed) FREDERICK H. PARKER.

Subscribed and sworn to before me this twenty-sixth day of September, A. D. 1911.

EARLE W. MCELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1918.

(Notarial Seal)

262 *Motion for restraining order.*

(Filed October 4, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL., petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

MOTION FOR RESTRAINING ORDER.

Now come petitioners in the above-styled cause and exhibit herewith their petition filed in this court. They say that the order complained of in said petition will become effective on the 15th day of November unless enjoined, set aside, or suspended by this court, and that the tariffs herein called for will have to be filed at an early date, unless such order is suspended, enjoined, or set aside, and that, as appears from said petition, the filing of said tariffs and the putting into effect of said order will subject your petitioners to great and irreparable injury, as is set forth in said petition. The publication of the tariffs will be attended with heavy expense and thereby also subjecting your petitioners to irreparable injury.

Wherefore petitioners pray that this motion and the matter of the petition requesting a restraining order and temporary injunction be set down for hearing at an early day, and that upon such hearing this court grant a temporary injunction and restraining order suspending the order of the commission complained of in the petition until such time as the court can hear said petition and make its order in the premises.

F. C. DILLARD,
ROBERT DUNLAP,
T. J. NORTON,
Attorneys for Petitioners.

263 *Acceptance of notice of hearing.*

(Filed October 4, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
v.
UNITED STATES OF AMERICA. } No. 50.

Service is hereby accepted of notice of the hearing of the application for a temporary injunction and restraining order in the above case by the United States Commerce Court on October 17, 1911, and formal notice is hereby waived.

BLACKBURN ESTERLINE,
For the United States.
P. J. FARRELL, *for I. C. C.*

264 (Duplicate.)

Notice to Attorney General.

(Issued October 4, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL., petitioners, vs. UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

The President of the United States, to honorable George W. Wickersham as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce Court, at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 4th day of October, A. D. 1911.

G. F. SNYDER, *Clerk.*

[Seal of United States Commerce Court.]

Original of above notice and copy of petition served upon honorable George W. Wickersham, Attorney General of the United States, this 5th day of October, A. D. 1911. Accepted by Blackburn Esterline.

F. J. STAREK, *Marshal.*

265 (Duplicate.)

Notice to Chairman of Interstate Commerce Commission.

(Issued October 4, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL., petitioners, vs. UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

The President of the United States, to Hon. Judson C. Clements as Chairman of the Interstate Commerce Commission:

You are hereby notified that a petition has been filed in the above-entitled case in the office of the clerk of the United States Commerce

Court, at Washington, D. C., copy of which is herewith served by filing said copy in the office of the secretary of the Interstate Commerce Commission.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 4th day of October, A. D., 1911.

G. F. SNYDER, *Clerk.*

[Seal of United States Commerce Court.]

Original of above notice and copy of petition served upon Edward A. Moseley, secretary of the Interstate Commerce Commission, this 5th day of October, A. D. 1911. Accepted by J. H. Howell.

F. J. STAREK, *Marshal.*

266 *Appearance.*

(Filed October 7, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & North Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Milwaukee & Puget Sound Railway Company; Denver & Rio Grande Railroad Company; Missouri Pacific Railway Company; Western Pacific Railway Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company, petitioners,

v.

UNITED STATES OF AMERICA, RESPONDENT.

} In Equity. No. 50.

APPEARANCE.

To Mr. G. F. Snyder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as a party respondent, and of myself as its solicitor.

Dated October 5, 1911.

P. J. FARRELL,

Solicitor for Interstate Commerce Commission, Respondent.

267 *Affidavit of E. B. Boyd.*

(Filed October 14, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL., petitioners, v. UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

E. B. BOYD, being first duly sworn, deposes and says that he is assistant to the vice president of the Western Pacific Railway Company, and that he is familiar with the various traffic matters and rate adjustments pertaining to, or connected with, said Western Pacific Railway Company.

The Western Pacific Railway is 921 miles in length and extends from Salt Lake City, in the State of Utah, to Oakland and San Francisco, in the State of California. The line crosses two ranges of mountains, which necessitated a heavy expenditure for construction, the road having cost to date, in cash (including such equipment as it now has), $73,027,995, or an average cost per mile of $78,749. In addition, there is still due and unpaid to the Denver and Rio
268 Grande Railroad Company for interest on various advancements for construction purposes made by the latter company $2,402,844.

The construction of the Western Pacific Railway was commenced in the latter part of the year 1905, and, beginning with the fiscal year July 1, 1911, the company commenced filing reports with the Interstate Commerce Commission required by law as a common carrier. A summary of the reports so filed is as follows:

WESTERN PACIFIC RAILWAY COMPANY.

	August, 1911.	July, 1911.	Total for 2 months.
Operating revenues	$500,080.00	$422,084.56	$922,164.56
Operating expenses and taxes	357,556.00	324,883.56	682,439.57
Operating income	$142,524.00	$97,200.99	$239,724.99
Sundry charges to income, less credits	30,494.00	24,463.43	54,957.43
	$112,030.00	$72,737.56	$184,767.56
Proportion of fixed charges	$208,020.00	$208,020.00	$416,040.00
Deficit	$95,990.00	$135,282.44	$231,272.44

The earnings above set forth are the best so far in the history of the company, but it is to be noted from the statement that the company is earning less than 60 per cent of its fixed charges.

Throughout its entire length the line parallels that of the Southern Pacific Railway, though the eastern terminus of the Western Pacific is Salt Lake City, whereas the eastern terminus of the Southern Pacific is Ogden. From their respective eastern terminals the lines are parallel and about 50 miles apart, gradually approaching each
269 other, and from Wells, Nevada, to Winnemucca, Nevada, a distance of 185 miles, are in no instance more than a few miles apart. From Winnemucca the Western Pacific Railway diverges from the Southern Pacific, taking a more northerly route and going through the towns of Oroville and Marysville, in California, but crosses the Southern Pacific again at Sacramento and reaches Oakland via Stockton. As these are the only rail lines between Utah common points and San Francisco and central Pacific coast terminal points, there exists the keenest competition for business between them throughout the entire length of their respective lines.

The purpose in constructing the Western Pacific was to participate in transcontinental traffic to and from the Pacific coast and to and from points intermediate thereto between Salt Lake City and San Francisco, as well as to participate in and develop such local business as the sparsely settled section of the country it traverses should afford.

The rates from eastern points to points between Salt Lake City, the eastern terminus of Western Pacific, and San Francisco, its western terminus, are, and have been for many years, influenced largely by water competition from various points on the Atlantic seaboard to Pacific coast terminal points and points taking the same rates as the aforesaid Pacific coast terminal points. This water competition has been an ever increasing one, particularly in the last few years since the opening of the so-called Panama and Tehuantepec routes, and has necessitated the making by the rail carriers of numerous commodity rates to Pacific coast terminal points, which commodity
270 rates are taken from the already low class basis and are, in my opinion, unreasonably low and, in fact, do not afford a reasonable compensation, the cost of service and the investment in the Western Pacific Railway considered, but which the Western Pacific Railway Company was forced to meet from its completion and must continue to meet or give up a large percentage of the tonnage for the transportation of which it was constructed.

Your affiant further says that the rates on various commodities, both eastbound and westbound, between Atlantic seaboard territory and Pacific coast terminal territory, are made so low by the water carriers plying between the ports in said territories that the Western Pacific Railway Company is entirely unable to meet said rates, for the reason that should it participate in the transportation of said commodities at said low rates as made by said water carriers it would not receive sufficient revenue therefrom to pay the cost of the said transportation. As illustrating these extremely low rates charged by the water carriers between the Atlantic seaboard and

Pacific coast ports, compared to the rates charged by the all rail carriers between said points, the following table is presented:

271 WATER RATES FROM ATLANTIC SEABOARD TERRITORY TO PACIFIC COAST TERMINAL POINTS COMPARED TO RAIL RATES BETWEEN THE SAME POINTS.

Commodity.	Water.	Rail.
Westbound:		
Structural steel	$8.00 to $10.00 per gross ton.	$0.80 per cwt.[1]
Cotton goods	0.90 per cwt.	1.10 per cwt.
Machinery	1.00 per cwt.	1.50 per cwt.
Eastbound:		
Hops	0.50 per cwt.	1.50 per cwt.
Dried fruit	0.45 per cwt.	1.10 per cwt.
Canned goods	0.45 per cwt.	0.85 per cwt.
Wine	0.40 per cwt.	0.75 per cwt.

[1] Or $17.92 per gross ton.

The water rates above mentioned are taken from the printed tariffs of the steamship lines in effect at the date of this affidavit, but these must not be taken as representing minimum rates in every case, as the water carriers make special rates lower than those published, depending upon the amount of available space in the ships and the character of the commodities offered. It will thus be seen that the inability of the Western Pacific Railway Company to meet the abnormally low rates charged by the water carriers compels it to give up the transportation of a large and ever increasing tonnage, which, were it not for the said water competition, it would carry over its rails at a normal and reasonably compensatory rate.

272 I have read the affidavit of H. E. D. Jackson, traffic manager of the American-Hawaiian Steamship Company, filed in this cause, and believe that his statement illustrating the growth of this water competition and showing that the tonnage by ship delivered to and hauled from Pacific coast terminals has increased from the year 1909, when it amounted to 397,706 tons, to 1910, when it amounted to 494,547 tons, and that the present tonnage by water is increasing largely over 1910 is correct. It must be remembered that much of this tonnage at the Pacific coast ports, both east and west bound, is destined to, or comes from, interior points, some of which, being located on navigable streams (such, for instance, as Sacramento), take an extremely low rate, influenced by the water competition, even where the tonnage itself is not actually transported to the ocean port by water. H. E. D. Jackson's affidavit, which I believe to be a true statement of the situation, estimates that the westbound tonnage alone moving from Atlantic seaboard to Pacific coast terminals will approximate 300,000 tons for the year 1911, and that for the year 1912 it will approximate 350,000, and that the present steamers owned by the American-Hawaiian Steamship Company will, with the opening of the Panama Canal, carry 700,000 tons per annum, and I especially call attention here to the

fact that the American-Hawaiian Steamship Company alone expects to have a capacity, by January 1, 1915, of 1,000,000 tons per annum. There are already in operation several other steamship lines, such as the Bates and Cheseborough Line operated in connection with the Panama Railroad and the Government Steamship Line between New York and the eastern terminus of the Panama Railroad, as well as the Pacific Mail Steamship Company. From my long experience as a traffic official, I am convinced that with the
273 opening of the Panama Canal, or even prior thereto, a great many more steamship lines will engage in the transportation by water of commodities from Atlantic seaboard to the Pacific coast. Taking the American-Hawaiian Steamship Company as a criterion, I think it is probable that the present steamship lines will treble their capacity by January 1, 1915, as the American-Hawaiian Steamship Line expects to do, and which can readily be done, considering the fact that there are always available numerous ships on the high seas which can be diverted to any particular line of traffic when necessary.

The order of the Interstate Commerce Commission in the so-called fourth section cases, should it not be set aside, offers but one alternative to the Western Pacific Railway Company:

1. To advance its Pacific coast terminal rates, which, for reasons above stated, would immediately cause a further large and important tonnage to be diverted entirely from its line to the water carriers with a consequent loss or revenue; or

2. To reduce its rates to the sparsely settled, intermediate, mountainous territory below what this affiant believes to be a reasonable and fair basis. In fact, considering the density of the tonnage carried by the Western Pacific Railway to this undeveloped territory, I do not believe that even the present rates afford a return that will pay for the cost of the transportation of the commodities.

It will thus be seen that the Western Pacific Railway Company is to a very large extent dependent upon its Pacific coast terminal business, and that anything which has the result of reducing
274 or diverting this business will result in a virtual confiscation of its property. The Western Pacific, like any other new line of railroad, has but very recently acquired such business as it now has, and it is largely of a floating character, due, in most instances, to the excellent service offered by the Western Pacific Railway Company, and my experience has been that this particular character of business is more easily diverted to other lines, whether rail or water.

In order to illustrate practically the effect that the order of the commission in the so-called fourth section cases would have upon intermediate rates, should it become effective, I have had prepared the following statement. Since the Interstate Commerce Commission fixed a certain scale of class and commodity rates as reasonable in the case of Commercial Club Traffic Bureau of Salt Lake City v. A., T. & S. F., No. 2662, lower in all instances than the rates pre-

viously charged to Salt Lake City from various eastern points, I have taken the commission basis for the purpose of this illustration as being reasonable, and have compared thereto the rates ordered in by the commission to Carlin, Winnemucca, and Gerlach, typical points on the Western Pacific, showing what the rate would be to said jobbing centers (as well as Pacific coast terminal points), using the percentage of mileage increase over Salt Lake to those points as a factor:

275

Commodity.	From—	Basis.	To— Utah common points.	Carlin, Nev.	Winnemucca, Nev.	Gerlach, Nev.	San Francisco.
Mileage	Chicago	Distance	1,492	1,730	1,857	1,981	2,278
		Increase over Utah		14.2%	24.5%	32.8%	52.6%
	Missouri River	Distance	1,089	1,247	1,365	1,486	1,786
		Increase over Utah		24.7%	36.5%	48.9%	78.6%
Canned meats	Chicago	Present rate	1.15	2.03	2.00	2.00	.90
		Commission's order	.85	.965	.965	.965	
		Mileage increase		.97	1.06	1.13	1.295
	Missouri River	Present rate	.95	2.00	2.00	.00	.85
		Commission's order	.68	.85	.85	.85	
		Mileage increase		.85	.93	1.01	1.215
Carpets	Chicago	Present rate	2.85	2.75	2.75	3.20	1.85
		Commission's order	1.85	1.98	1.98	1.98	
		Mileage increase		2.115	2.305	2.455	2.825
	Missouri River	Present rate	2.05	2.38	2.38	2.80	1.85
		Commission's order	1.48	1.85	1.85	1.85	
		Mileage increase		1.845	2.02	2.205	2.645
Dry goods (cotton pc. goods)	Chicago	Present rate	2.50	2.75	2.75	3.20	1.10
		Commission's order	1.56	1.175	1.175	1.175	
		Mileage increase		1.78	1.94	2.07	2.38
	Missouri River	Present rate	2.00	2.38	2.38	2.80	1.10
		Commission's order	1.25	1.10	1.10	1.10	
		Mileage increase		1.56	1.705	1.86	2.23
Furniture, wooden (bedroom sets)	Chicago	Present rate	1.25	1.99	1.99	2.31	1.50
		Commission's order	1.25	1.605	1.605	1.605	
		Mileage increase		1.425	1.555	1.69	1.905
	Missouri River	Present rate	.95	1.74	1.74	2.05	1.50
		Commission's order	1.00	1.50	1.50	1.50	
		Mileage increase		1.245	1.365	1.49	1.785
Glassware	Chicago	Present rate	1.60	1.66	1.66	1.93	1.20
		Commission's order	1.20	1.285	1.285	1.285	
		Mileage increase		1.37	1.495	1.595	1.83
	Missouri River	Present rate	1.28	1.50	1.50	1.76	1.20
		Commission's order	.96	1.20	1.20	1.20	
		Mileage increase		1.195	1.31	1.43	1.755
Hollow ware (stove furniture), pots, kettles, etc.	Chicago	Present rate	1.33	1.40	1.40	1.615	1.20
		Commission's order	1.20	1.285	1.285	1.285	
		Mileage increase		1.37	1.495	1.595	1.83
	Missouri River	Present rate	1.06	1.26	1.26	1.475	1.20
		Commission's order	.96	1.20	1.20	1.20	
		Mileage increase		1.195	1.31	1.43	1.715
Oilcloth (floor, etc.)	Chicago	Present rate	1.42	1.99	1.99	2.31	1.00
		Commission's order	1.00	1.07	1.07	1.07	
		Mileage increase		1.14	1.245	1.33	1.525
	Missouri River	Present rate	1.10	1.74	1.74	2.05	1.00
		Commission's order	.80	1.00	1.00	1.00	
276		Mileage increase		1.00	1.09	1.19	1.43
Paints	Chicago	Present rate	1.195	1.40	1.40	1.615	.95
		Commission's order	.90	1.015	1.015	1.015	
		Mileage increase		1.03	1.12	1.195	1.375
	Missouri River	Present rate	.925	1.26	1.26	1.475	.95
		Commission's order	.72	.95	.95	.95	
		Mileage increase		.90	.985	1.07	1.285
Paper (building)	Chicago	Present rate	1.125	1.40	1.40	1.615	.75
		Commission's order	.65	.80	.80	.80	
		Mileage increase		.74	.81	.865	.99
	Missouri River	Present rate	.975	1.26	1.26	1.475	.75
		Commission's order	.52	.75	.75	.75	
		Mileage increase		.65	.71	.775	.93
Twine and cordage	Chicago	Present rate	1.60	1.66	1.66	1.93	.95
		Commission's order	1.25	1.015	1.015	1.015	
		Mileage increase		1.425	1.555	1.66	1.905
	Missouri River	Present rate	1.28	1.50	1.50	1.76	.95
		Commission's order	1.00	.95	.95	.95	
		Mileage increase		1.245	1.365	1.49	1.785

Commodity.	From—	Basis.	To— Utah common points	Carlin, Nev.	Winnemucca, Nev.	Gerlach, Nev.	San Francisco.
Wagons	Chicago	Present rate	1.33	1.80	1.80	1.80	1.25
		Commission's order	1.15	1.335	1.335	1.335	.....
		Mileage increase	.....	1.315	1.43	1.525	1.755
	Missouri River	Present rate	1.03	1.80	1.80	1.80	1.25
		Commission's order	.92	1.25	1.25	1.25	.....
		Mileage increase	.....	1.145	1.255	1.37	1.645
Woodenware	Chicago	Present rate	1.60	1.66	1.66	1.93	1.35
		Commission's order	1.25	1.445	1.445	1.445	.....
		Mileage increase	.....	1.425	1.555	1.66	1.905
	Missouri River	Present rate	1.28	1.50	1.50	1.76	1.35
		Commission's order	1.00	1.35	1.35	1.35	.....
		Mileage increase	.....	1.245	1.365	1.49	1.785
Agricultural implements (horse)	Chicago	Present rate	1.33	1.43	1.43	1.645	1.25
		Commission's order	1.15	1.335	1.335	1.335	.....
		Mileage increase	.....	1.315	1.43	1.525	1.755
	Missouri River	Present rate	1.03	1.26	1.26	1.475	1.20
		Commission's order	.92	1.20	1.20	1.20	.....
		Mileage increase	.....	1.145	1.255	1.37	1.645
Agricultural implements (hand)	Chicago	Present rate	1.49	1.99	1.99	2.31	1.35
		Commission's order	1.25	1.445	1.445	1.445	.....
		Mileage increase	.....	1.425	1.555	1.66	1.905
	Missouri River	Present rate	1.17	1.74	1.74	2.05	1.25
		Commission's order	1.00	1.25	1.25	1.25	.....
		Mileage increase	.....	1.245	1.365	1.49	1.785
Coffee (roasted)	Chicago	Present rate	1.33	1.40	1.40	1.615	1.10
		Commission's order	.90	1.175	1.175	1.175	.....
		Mileage increase	.....	1.03	1.12	1.195	1.375
	Missouri River	Present rate	1.06	1.26	1.26	1.475	1.10
		Commission's order	.72	1.10	1.10	1.10	.....
		Mileage increase	.....	.90	.985	1.07	1.285
Nails and spikes, wire (fence)	Chicago	Present rate	1.10	1.40	1.40	1.615	.70
		Commission's order	.70	.75	.75	.75	.....
		Mileage increase	.....	.80	.87	.93	1.07
	Missouri River	Present rate	.83	1.26	1.26	1.475	.70
		Commission's order	.56	.70	.70	.70	.....
		Mileage increase	.....	.70	.765	83.5	1.00

		Chicago.	Mo. River (Omaha).	Route.
Mileage computed as follows:				
Chicago to Omaha (short line)	492	.....	.....	C. & N. W. or C. M. & St. P.
Omaha to Ogden (short line)	1,030	.....	.....	U. P. Ry.
Through	.....	1,192	.....	
Ogden to Carlin (short line)	247	1,739	1,247	So. Pac.
Ogden to Winnemucca (short line)	365	1,857	1,365	Sou. Pac.
Salt Lake to Gerlach (short line)	489	1,981	1,489	West. Pac.
Ogden to San Francisco (short line)	786	2,278	1,786	So. Pac.

NOTE.—The Commission's order in the fourth-section cases provide that no higher rates shall be charged to intermediate points than to Pacific coast terminal points.

It is to be noted that in many instances this will cause a reduction in rates on commodities to Utah common points below what the Commission themselves found to be reasonable rates to those points in the so-called Salt Lake case.

The one example of this out of the few illustrations we have given above is the rate on cotton piece goods from Chicago to Utah common points, which, if the Commission's order in the fourth-section cases is strictly observed, will be reduced to Utah common points from Chicago from $1.56 to $1.17½, and from the Missouri River to Utah common points will be reduced from $1.25 to $1.10.

It is to be noted that a few of the principal commodities actually moving to Carlin, Winnemucca, and Gerlach have been taken for the purpose of comparison, the three towns themselves being used merely as illustrative, the same relative situation applying to all points not actually taking Pacific coast terminal rates. In this connection it is to be remembered that the Western Pacific in many instances has a longer line to the various points than its competitor, the

Southern Pacific, and that the transportation service performed by it is therefore greater. Yet, from an examination of the
278 order of the commission it will be seen that the greater transportation service is utterly ignored and that the rates throughout the entire length of the Western Pacific Railway from Salt Lake City, its eastern terminus, to Pacific coast terminal points are blanketed, thus entirely ignoring the principal elements—namely, cost of service and length of haul—which have from the beginning of American railroad transportation been the controlling factors in rate making.

Your affiant further says that should the order of the Interstate Commerce Commission in the so-called fourth-section cases be adopted (either by advancing the terminal rates or reducing the intermediate rates) it will cause much further loss of revenue to the Western Pacific Railway Company as to further greatly increase the deficit, which, as has been shown, is already large, and that to so further reduce the deficit of the said Western Pacific Railway Company would amount to a confiscation of said company's property.

Further deposing, this affiant says that the present rates, both to intermediate points and Pacific coast terminal points, are very low by reason of the water competition heretofore explained, as well as the competition of the Southern Pacific Railway Company, which has a mileage of 786 miles compared to the mileage of 921 miles of the Western Pacific Railway, and should the so-called fourth-section order of the Interstate Commerce Commission be not suspended and set aside by this honorable court pending a full hearing on the issues involved in this case, the Western Pacific Railway Company will suffer irreparable injury and irremediable loss, for the reason that should eventually its adjustment of rates be found reasonable this company will have no method of collecting the difference in
279 rates under the unreasonable adjustment ordered in by the Interstate Commerce Commission—which, if not enjoined and set aside, will become effective on November 15th—and the present adjustment of rates which this affiant (as heretofore stated) believes to be very low and nondiscriminatory.

This affiant further says that since the promulgation of the order of the Interstate Commerce Commission, in the so-called fourth-section cases early in August, that he has endeavored to ascertain what probable effect on the revenues of the said Western Pacific Railway Company the new adjustment of rates prescribed in said order would have, but that he has found that the said adjustment ordered in by the Interstate Commerce Commission would have such a widespread effect on all existing rates from Western Kansas and Nebraska to Pacific coast terminals that he, this affiant, has been unable up to the present time, and is now unable, to state the loss in revenue that will follow the adoption of the said order by the carriers parties thereto. But this affiant believes, from his long experience, that the said loss will be very great and that it will fall princi-

pally upon the carriers having lines of road in the so-called transcontinental territory.

(Signed) E. B. BOYD.

STATE OF ILLINOIS, *County of Cook, ss:*

Subscribed and sworn to before me this 12th day of October, A. D. 1911.

(Signed) N. F. JARNAGIN,
Notary Public.

[NOTARIAL SEAL.]

280 *Motion of Interstate Commerce Commission.*

(Filed October 14, 1911.)

In the United States Commerce Court.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago & North Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Milwaukee & Puget Sound Railway Company; Denver & Rio Grande Railroad Company; Missouri Pacific Railway Company; Western Pacific Railway Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company, petitioners,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission, intervening respondent.
} In Equity. No. 50.

MOTION TO DISMISS.

Comes now the Interstate Commerce Commission, one of the above-named respondents, by its solicitor, and moves this honorable court to dismiss the petition in the above-entitled suit, and in support of said motion shows:

That the allegations contained and the facts set forth in
281 said petition do not constitute a cause of action or make a case which entitles the above-named petitioners, or any of them, to

the relief or any of the relief they, in and by said petition, request the court to grant.

That the sole and only basis of said suit is, as shown in and by said petition, a decision rendered by this respondent in response to certain applications for relief made by said petitioners, under section 4 of the act to regulate commerce, as amended by the act of June 18, 1910; that the pertinent portion of said section 4 is:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transporta-
282 tion of passengers or property; and the commission may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section * * *."

That, as shown in and by said petition, said decision of this respondent was rendered in response to applications made by said petitioners in special cases and after this respondent had made full investigation in the premises, and that in and by said decision this respondent prescribed the extent to which said petitioners may be relieved from the operation of the prohibition contained, as aforesaid, in said section 4.

That, as shown in and by said petition, the above-entitled suit was instituted in this court upon the erroneous assumption that said decision is an order of this respondent, within the meaning of section 1 of the Commerce Court act of June 18, 1910, but that said decision is not an order of this respondent within the meaning of said section 1.

That this court has no jurisdiction over the subject matter of said suit, and can not grant the relief or any of the relief asked for by said petitioners in and by said petition.

Wherefore this respondent prays that said petition be dismissed.

P. J. FARRELL,
Solicitor for Interstate Commerce Commission, Respondent.

283 *Petition of intervention.*

(Filed October 16, 1911.)

In the United States Commerce Court.

No. 50.

ATCHISON, TOPEKA & SANTA FE RAILWAY CO. et al., petitioners, *vs.* UNITED STATES OF AMERICA, RESPONDENT.	Intervention petition.

Come now City of Spokane, Washington, County of Spokane, Washington, Chamber of Commerce of Spokane, Washington, and the Spokane Jobbers' Association of Spokane, Washington, and respectfully petition and show to this honorable court as follows:

I.

That the City of Spokane and the County of Spokane are municipal corporations under the constitution and laws of the State of Washington; that the Chamber of Commerce is a corporation under the laws of the State of Washington, and that the Spokane Jobbers' Association of Spokane, Washington, is an association of jobbers and shippers of the City of Spokane.

II.

That your petitioners herein were and are the complainants before the Interstate Commerce Commission in case No. 879 (being the first case filed with and before the Interstate Commerce Commission after the so-called Hepburn amendment of the commerce law became effective) against the Northern Pacific Company, et al., in which case the original petition was filed more than five years since.

III.

That your petitioners are interested in this action and proceeding, and were and are interested in the proceeding and case above mentioned before the Interstate Commerce Commission, and in which orders were made, and desire to appear as parties to and in this action and be represented by their counsel.

284 IV.

That in this suit and action before this court the orders made in the said proceeding No. 879 are involved, and the validity of such orders involve the rights of interests of your petitioners, and in this action and proceeding are involved alleged orders made upon the

application of the petitioners herein upon and under the amended 4th section of the commerce act with reference to long and short haul transportation and charges therefor.

Wherefore your petitioners pray that an order be made and entered herein, granting and allowing them leave and right to intervene and to appear as parties in this action, and to be represented by their counsel as and to the extent authorized by law and the rules of equity, practice, and procedure.

And your petitioners will ever pray.

A. M. CRAVEN,
Corporation Counsel of the City of Spokane.
JOHN WILEY,
Prosecuting Attorney of the County of Spokane.
J. B. CAMPBELL,
H. M. STEPHENS,
Attorneys for petitioners.

285 UNITED STATES OF AMERICA,
City of Washington, District of Columbia, ss:

H. M. Stephens, being first duly sworn upon oath, deposes and says he is one of the attorneys for the petitioners making and filing this petition herein, and makes this verification for and on behalf of said petitioners and each of them; that affiant personally knows the matters and things set forth and stated in said petition; that the matters and things stated and set forth in said petition are true as affiant verily believes.

H. M. STEPHENS.

Subscribed and sworn to this 16th day of October, A. D. 1911.
[NOTARIAL SEAL.] ARTHUR J. WAND,
Notary Public.
(Residing at Washington, District of Columbia, United States of America.)

286 *Affidavits.*

(Filed October 16, 1911.)

In the United States Commerce Court.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY Company et al., petitioners,
vs.
UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

AFFIDAVIT OF E. P. RIPLEY.

STATE OF ILLINOIS, *County of Cook, ss:*

E. P. RIPLEY, of lawful age, being duly sworn, deposes and says that he is president of the Atchison, Topeka and Santa Fe Railway Company, one of the petitioners in the above-entitled proceeding, and that he has been president thereof since 1896; that previously thereto he had spent twenty-seven years in railway service in various

departments, including both the traffic department and the operating department, and that since becoming president of said railway company he has kept in constant close relationship with the traffic department, as well as with the operating department and other departments, so that altogether his knowledge of and experience in railway traffic covers a term of about forty years.

287 He has read opinion No. 1623, rendered by the Interstate Commerce Commission on June 22, 1911 (21 I. C. C. R., 329), in regard to the applications of certain carriers to the commission under the fourth section of the interstate-commerce law, and also collaterally disposing of case No. 1665, commonly called the Reno case, and case No. 1796, generally known as the Phoenix case. He has also read opinion No. 1627 of the Interstate Commerce Commission, rendered on the same date (21 I. C. C. R., 400), on the applications of certain carriers under said fourth section, and at the same time dealing collaterally with case No. 879, commonly called the Spokane case, and case No. 2662, generally known as the Salt Lake case. All of said four cases, which had been pending long before applications under the fourth section were made, have been popularly designated as the intermountain cases, and the said applications of certain carriers under the fourth section were by the commission merged with said cases because the complaints in said intermountain cases had to do not so much with the reasonableness of rates as with rate adjustments considered under the fourth section.

In said opinion No. 1623 the commission decided the Phoenix case (Maricopa County Commercial Club *v.* Santa Fe, Prescott and Phoenix Railway Company, No. 1796), which directly affects the Atchison, Topeka and Santa Fe Railway Company, as the city of Phoenix is situated upon its line of railway, and as rates to numerous points intermediate between Phoenix and the Pacific coast are thereby affected. Said opinion, referring to the supposed railroad policy which has made blanket rates from points east of the Missouri River to Pacific coast terminals, says (p. 354):

288 "How have the carriers justified this blanket to the coast, but not to intermediate points? Long before the blanket had been stretched to its present western extent the communities intermediate between its eastern border and the Pacific made protests against the injustice that was being done. For nearly a quarter of a century this complaint has been heard and has ceased at times only to be revived with greater earnestness. A line of railroad policy which leads to such result may be presumed to have in it something artificial and unnatural."

Affiant says that, far from being artificial, the condition is the natural and equitable result of competition and of circumstances beyond the control of each carrier, and that it has enabled the Pacific coast terminal points to avail themselves of the offerings of manufacturers and others within the blanketed territory in addition to the markets upon the Atlantic seaboard which they were compelled to patronize before the construction of transcontinental lines of rail-

277

way. This was neither an "injustice" to intermediate points, nor was it in any sense a valid ground of complaint.

On the implication of the language just before quoted, that the blanket from the Atlantic coast to the Missouri River is not extended to intermountain or to intermediate points east of Pacific coast terminals, affiant says that the intermountain and intermediate points share with the terminal points the multiplicity of manufactories and markets which have been thrown open to the western and Pacific coast country by the blanket system of rates which the carriers found necessary; and that when Los Angeles or San Francisco can buy in Kansas City, St. Louis, Chicago, Pittsburgh, and in other places of manufacture in that region on terms equal to those which the
289 Atlantic seaboard has to offer, then it follows that the intermountain and intermediate points, whose rates are based on the through rate plus the local back, are brought just as directly in contact with the markets of the Middle West as they are with the markets of the Atlantic seaboard. Affiant says that the complaint mentioned in the language quoted has not been that the benefit of the blanket rates between the Atlantic coast and the Missouri River has not fallen to intermediate points in the intermountain country, but it has been because these intermountain points, with the disadvantage in which they are placed by nature, have not been favored with the same rates as have been compelled by entirely different conditions existing at points on the Pacific coast more advantageously situated.

On the statement of said opinion (p. 355) that sea competition to the Pacific coast does not extend to Chicago, affiant says, from his knowledge and experience, that it extends to the Missouri River or even beyond in the sense that, as stated in opinion No. 1627 of the commission (p. 422) it operates actually to "dictate" the rate from blanketed territory to the Pacific coast. Said opinion No. 1627 states at page 423 that, if the question is considered broadly and in all its aspects, it cannot be said that the legitimate effect of water competition may not be to reduce the rail rates from interior eastern points. As an example, soda ash, used, among other purposes, in the manufacture of sugar on the Pacific coast, is transported to the Pacific coast from Atlantic seaboard points by ship, and that fact "dictates" the rate which the Santa Fe Company must charge from a manufactory of soda ash on its line at Hutchinson, Kansas, to Los Angeles or San Francisco; and what discrimination it is against points in the intermountain region to open up the manu-
290 factory at Hutchinson to Pacific coast points and thus give them, and also the interior points, an additional source of supply, affiant is unable to comprehend.

Affiant says that neither the intermountain rates nor the terminal rates were originally made westbound by the transcontinental carriers; that the rates made into the intermountain region were first made eastward from the Pacific coast before the transcontinental lines were constructed westward and that railroads were built from the Pacific coast eastward toward the mountain region for the sole

purpose of serving that region before there were any railroads from the east across the mountains; that the rates at that time to the intermountain region were made up by adding the rail charge from Pacific coast points to the ship charge from the Atlantic seaboard to the Pacific; and that when the transcontinental lines were constructed westward they found water competition already established as to said transportation. Admittedly the ocean is a dominating and controlling force to-day—practically as much so as it was then; and because of the advances that have been made in navigation, reducing at once the time of transit and the perils of the sea, as well as the costs of operation, together with the shortening of actual mileage by the Panama Canal, soon to be opened, the force of water competition hereafter will be greater than it ever has been.

In said opinion it is stated (p. 365):

"In the east they have stretched the blanket from Portland, Maine, to Denver, Colorado, a distance farther than from Antwerp to Moscow, but they refuse to admit that from any point along this line it would be justifiable to make the rates given to the coast terminals applicable to Reno."

As to that, affiant says that it would be discriminatory
291 against other points and a burden upon the payers of other freight to make rates which would practically transfer Reno from its situation in the mountain country and make it a seaport enjoying rates which the repeated decisions of the commission and of the courts have declared to be lower than the carriers would be justified in charging were it not for the stress of water competition. It is not given to the carriers to alter geographical facts.

Said opinion says (p. 366), by implication if not directly, that the transcontinental carriers have given advantage or preference to one community and after competing with each other across a table have determined what locality might develop and what one might be retarded; but affiant avers that the census records of the United States Government show that the complaining points in the intermountain country have advanced materially even more rapidly during the last two decades than points in the Middle West which have been supposedly enjoying the extraordinary benefit of blanket rates. The following tables of population show that some of these terminal cities increased in population even less than the interior cities and that generally both the terminal and the intermountain cities grew more rapidly than the manufacturing and jobbing cities in Ohio, Michigan, Illinois, Iowa, and Missouri, which were supposedly favored by the blanket system of rates. The following facts drawn from the census reports of 1890, 1900, and 1910 show how baseless and false has been the complaint of the intermountain jobbers, which has, as the commission says (opinion No. 1623, p. 354), been "heard
292 for nearly a quarter of a century" and which "has ceased at times only to be raised with greater earnestness," that by their rate adjustments the carriers have oppressed the intermountain

region, prevented development, strangled industry, and, as the commission affirms (opinion No. 1627, p. 424), concentrated "in these coast cities commercial and transportation advantages to which their mere location does not entitle them." The whole charge against the carriers is shown by the census facts to be wrong—groundless and wrong. It is and has been based upon the false and often rejected premise that the rate to a seaport is the measure of a rate to an inland town. The census tables follow:

293 *Table showing growth of population in the cities named, taken from U. S. census of 1890, 1900, and 1910, with per cent of increase. Italics show decreases.*

	1890	1900	Per cent increase 1900 over 1890.	1910	Per cent increase 1910 over 1900.
Points taking terminal rates:					
San Francisco	298,997	342,782	14.6	416,912	21.6
Los Angeles	50,395	102,479	103.4	319,198	211.4
Portland	46,385	90,426	94.9	207,214	129.1
Sacramento	26,386	29,282	11.0	14,698	32.6
Stockton	14,424	17,506	21.4	23,253	32.8
Marysville	3,991	3,497	*12.4*	5,430	55.3
A. T. & S. F. points taking intermediate rates:					
Fresno	10,818	12,470	15.3	21,892	99.6
Phœnix	3,152	5,544	75.9	11,134	100.8
Albuquerque	3,785	6,238	64.8	11,020	76.7
El Paso	10,338	15,906	53.8	39,279	146.9
Pueblo	24,558	28,157	14.6	44,395	57.7
Denver	106,713	133,859	25.4	213,381	59.4
Northern line points taking intermediate rates:					
Spokane	19,922	36,848	18.5	104,402	183.3
Reno	3,563	4,500	26.3	10,867	141.5
Ogden	14,889	16,313	9.5	25,580	56.8
Salt Lake City	44,843	53,531	19.4	92,777	73.3
Western jobbing points:					
Kansas City	132,716	163,752	23.4	248,381	51.7
St. Joseph	52,324	102,979	96.8	77,403	24.9
Leavenworth	19,768	20,735	4.9	19,363	6.6
Atchison	13,963	15,722	12.6	16,429	4.5
Wichita	23,853	24,671	3.4	52,450	112.5
Salina	6,149	6,054	*1.5*	9,688	59.5
Des Moines	50,093	62,139	24.0	86,368	39.0
Sioux City	37,806	33,111	*12.4*	47,828	44.4
Council Bluffs	21,474	25,802	20.2	29,292	13.5
Fremont	6,747	7,241	7.3	8,718	20.4
Lincoln	55,154	40,169	*9.0*	43,973	9.5
Omaha	140,452	102,555	*27.0*	124,096	21.0
Middle West manufacturing points:					
Joliet	23,264	29,353	26.2	34,670	18.1
Rockford	23,584	31,051	31.7	45,401	46.2
Aurora	19,688	24,147	22.6	29,807	23.4
South Bend	21,819	35,999	65.0	53,684	49.1
Akron	27,601	42,728	54.8	69,067	61.6
Columbus	88,150	125,560	42.4	181,511	44.6
Grand Rapids	60,278	87,565	45.3	112,571	28.6
Battle Creek	13,197	18,563	40.6	25,267	36.1
Niles	4,197	4,287	2.1	5,156	20.3
Beloit	6,315	10,436	65.3	15,125	44.9

294 Affiant says that the foregoing data sufficiently answer the statement of said opinion (at p. 368) that "the growth of the Pacific coast certainly is in no small part to be accredited to the discretion lodged in and exercised by the transcontinental traffic manager"; and it is a matter of common knowledge that no parts of the United States have prospered more generally during the last two decades than the Pacific coast and the intermountain territory. The transcontinental traffic managers have given to those regions

access to the innumerable manufactories of the middle United States when they had before been confined to the markets of the Atlantic seaboard and those of foreign countries.

Affiant says that he has read also opinion No. 1627, in which are decided what are known as the Spokane case and the Salt Lake case. In said opinion it is stated (p. 421):

"Those shippers most interested in transcontinental rates have been the jobbers of San Francisco and other coast terminal cities. The only desire of those shippers has been that rates should be so adjusted as would enable them to transact business against interior cities. So long as this relation of rates has existed the jobber has been willing to pay both a high rate to San Francisco and a high rate from San Francisco."

To the suggestion that the jobber pays higher rates than he should to San Francisco and other terminal points, affiant answers by quoting the language of the commission found at page 417 of the same opinion, where comment was being made upon the proof of water competition offered in the Spokane case:

"These actual transactions prove more conclusively than any mere statement that almost every article which is the subject of
295 ordinary commerce between the coasts can and does move from New York to San Francisco by water rates materially lower than those maintained by the defendants by rail."

Affiant says that at page 351 of opinion No. 1623 it is shown that the total volume of transcontinental tonnage by rail two years ago was three million tons a year, while the total water-borne traffic was about ten per cent of that. Included in said tonnage is freight not subject to water competition as well as that which is subject thereto, and the former is very considerable in amount. When it is taken into consideration that the railroads' proportion of this tonnage must be divided up among the various rail routes to the Pacific coast, namely, the Canadian Pacific, the Great Northern, the Northern Pacific, the Oregon-Washington Railroad & Navigation Company, the Chicago, Milwaukee and Puget Sound, the Southern Pacific (Ogden line), the Western Pacific, the Santa Fe, the San Pedro, Los Angeles & Salt Lake, the Southern Pacific (El Paso line), it is manifest that ten per cent of the total tonnage, which means considerably more than ten per cent of the freight subject to water competition, it is a very large proportion for the water carriers, and those facts demonstrate that the competition of such carriers is very active and effective. The tonnage given for the American-Hawaiian Steamship Company in the opinion of the commission is not the total movement by water, for the California-Atlantic Steamship Company is now operating, and from the beginning tramp steamers and sailing vessels have been engaged in water service, while the Panama route, in connection with the Pacific Mail Steamship Company, has been engaged in handling this traffic for years past. From the
296 foregoing facts it appears that the jobbers at San Francisco and other terminal points have not been willing to pay and

have not paid a high rate to the Pacific coast, or a higher rate than they should have paid.

In said opinion No. 1627, it is stated (p. 424) that the effect of the present rate adjustment is to concentrate in Pacific coast cities a commercial and transportation advantage to which their mere location does not entitle them, but affiant says that the rates made to Pacific coast cities are compelled by water competition, and that the commission has frequently so recognized and so recognizes in the opinion mentioned; and affiant believes that no fact can be stated to show that the Pacific coast cities have received commercial and transportation advantages to which their location does not entitle them, or that they have received any consideration except that which they were able to demand by virtue of water competition. On the contrary, affiant avers that the census data heretofore set out and the general facts common to the knowledge of business men show that, considering the aridity of the intermountain region and the natural geographical disadvantages under which cities in that region exist, their growth has been, even in comparison with the most favorably located cities on the Pacific coast, really phenomenal.

Further speaking in support of the existing rate adjustment, which adjustment is criticized in both of the opinions mentioned on the ground that it is in some ways discriminatory to interior points, affiant says that the commission practically approves the present system employed by the carriers in making rates from all defined territories to Pacific coast terminals, and then proceeds to establish

zones covering territory Missouri River and east, using as a
297 basis for its zone lines the territorial boundary lines established by the transcontinental carriers and employed by them for many years past in making rates to Pacific coast terminal points to meet water competition. The zone basis established by the carriers should be employed in the making of joint through rates on the commission's theory to intermediate points only in those cases where the combination upon the terminal point now makes less than the direct through rate; that is, the so-called back-haul points; but to use a zone system that fits the Pacific coast terminal situation for the making of joint through rates to exclusive points upon the Santa Fe lines, where the present direct rate is not affected by the terminal combination, is fundamentally erroneous and clearly unfair.

The commission decides that from Missouri River zone points rates must not be higher than the rate from the same point of origin to Pacific coast terminals. Taking the existing rates from Missouri River to San Francisco as a basis, that would reduce rates upon the Santa Fe lines beginning in New Mexico, east of Albuquerque, and extending through up to Pacific coast terminals. At the intermediate points where the terminal rate is less than the direct normal rate, the terminal rates would apply on a postage-stamp basis beyond, to and including the terminal points. This would produce a postage-stamp application at both ends, as within the zone the rate would be the same from all points to the same western point upon the Santa

Fe where it supersedes the normal rate. If Missouri River manufactories are to be available to Pacific coast terminal points in competition with manufactories situated on the Atlantic seaboard and using the water routes from New York and other ports, then
298 frequent changes in rates to terminal points will be necessary, which, under the commission's decision, would correspondingly change the rate to the intermediate points. The territory in Arizona and New Mexico, east of Ash Fork, is in no way connected with the Pacific coast situation. Goods of eastern manufacture are not shipped into that territory by Pacific coast jobbers. The trade is supplied by Trinidad, Denver, Kansas City, St. Louis, Chicago, and points east. Several large jobbing points are located within that territory and compete with the eastern points named in distributing the same line of goods. Albuquerque and El Paso both do extensive jobbing business in Arizona and New Mexico. Neither competes to any great extent with Pacific coast terminals, and neither is in any way connected with the terminal situation. But, nevertheless, the commission's decisions would reduce the rates not only to both points but also to their market territory. The direct or normal rates to-day from Missouri River to western territory upon the Santa Fe line not affected by terminal combination are made with a certain relation of one shipping point to the other. The decision of the commission would disturb that adjustment. As an illustration, the commission's basis would compel the same rate from St. Paul, Duluth, Minnesota, and Superior, Wisconsin, to Gallup, New Mexico, as is in effect from Kansas City to the same point and would compel the Santa Fe to divide its Kansas City-Gallup rates with the lines leading from St. Paul, Duluth, and Superior to Kansas City. Under the commission's scheme the distance from some of the Missouri River points to Santa Fe intermediate points is greater than the distance from Chicago to the same points while
299 the rates would be less, thereby creating an unjust discrimination which does not exist under the present adjustment.

The commission's zone No. 2 would put the Santa Fe Chicago rates into a large territory served by many other carriers and would compel the application of those rates to the exclusive intermediate territory and Pacific coast points upon the Santa Fe lines. In other words, from all points in this zone to the Santa Fe interior territory the rates are the same as from the stations upon the Santa Fe line within the zone. The basis prescribed by the commission from this zone to intermediate points would reduce very considerably the normal differentials which exist to-day as between the rates from Denver, Kansas City, St. Louis, and Chicago to the same western points, which differentials are the result of demand of and negotiations with those jobbing and manufacturing centers covering a long period of years. As illustrative of this it may be mentioned that the orders would have the effect of making a lower rate from such distant points as St. Paul, Duluth, and Superior to New Mexico and Arizona points on the Santa Fe than from such nearer points as Chicago, St. Louis,

Memphis, Little Rock, or New Orleans; and the rates from said more distant points should be the same as those from Kansas City, Missouri; Wichita, Kansas; Oklahoma City, Oklahoma; and Fort Worth and Galveston, Texas. Affiant further says that the commission's basis from its zone east of Chicago would make a greater reduction to points in Arizona and New Mexico, which are not now affected by the Pacific coast terminal rate basis, than it would to the points west of those States which are now directly influenced by existing Pacific coast terminal rates. The direct through rates to-day in effect
300 to said territory in Arizona and New Mexico are made by using the local rate up to Chicago or St. Louis plus the rate beyond. By basing, as the commission has done, on a percentage above terminal rates, it would reduce the through rate from all territory east of Chicago, beginning at Raton, New Mexico, on the Santa Fe line, from some points, and postage stamp from there up close to Pacific coast terminals. After passing Las Vegas, New Mexico, on the Santa Fe, the postage stamp basis would be general, applying through to within a short distance of the Pacific coast terminal point. The postage stamp basis would be more extensive with rates from territory east of Chicago than from other zones, especially the western end. The map attached hereto and made a part hereof, showing the approximate boundary lines of the commission's zones and the important cities within the zones and upon the zone lines, will assist in making the situation clear.

The commission finds that water competition does exist and is a controlling force upon the rates of rail carriers at terminal points and that this competition has increased within the last year and is likely to be more forceful in the future, which permits of but one conclusion, and that is that the rates of the rail carriers to the Pacific coast terminal points will be frequently lowered; and affiant says that a system which compels the lowering of the rate upon the same commodity at the intermediate points whenever it is lowered at the terminal points owing to increased water competition is unsound as a basis of rate making and destructive of stable commercial conditions.

In opinion No. 1623 the commission says (p. 369):

"With the introduction of a policy which removes from
301 these interior points in some degree the disadvantage under which they have suffered with relation to eastern points of production it will become a matter of moment to the coast cities to avail themselves fully of the ocean as well as develop industries upon the Pacific coast itself which will compete with the industries of the East for the interior trade."

To that affiant says that there is nothing wrong with the policy of the rail carriers in getting as high rates as possible at Pacific coast terminal points up to figures that are reasonable, and that the universal objection that has been raised against the adjustment is, not that the Pacific coast terminal rates are high, but that interior rates are higher than those at the terminals. Therefore any decision of

the commission is inequitable that would have the effect of driving business way from the rail carriers and putting it upon the ocean. The manufacturer on the Pacific coast has been handicapped by low water rates from the East and by small population in home markets. With the increase of population home markets have grown. The complaint of the manufacturer has always been against the low water rates from eastern points to the Pacific coast upon goods like those he has been manufacturing. The interior rates from eastern points contemplated by the decision of the commission would, if put into effect, work the destruction of manufacturing business upon the Pacific coast in all those lines in which goods are now being transported from eastern manufacturing points to Pacific coast territory. The decision of the commission is distinctly antagonistic to Pacific coast terminal cities and is founded upon the erroneous idea that the growth of those cities has been caused by a policy of favoritism on the part of the rail carriers.

302 In the same decision (p. 343) Los Angeles is referred to as a "terminal point," the implication being that it has received from the transcontinental carriers consideration to which it is not entitled. As long ago as 1892 the Circuit Court of the United States for the Southern District of California, after a full hearing, found (50 Fed., 295) that water competition through San Pedro compelled rail rates to Los Angeles from eastern territory lower than reasonable rates and that therefore Los Angeles rates could not be used as a measure of rates at interior points. The Interstate Commerce Commission itself, in a recent case (19 I. C. C. R., 323), found that water competition existed via San Pedro to Los Angeles, and upon this finding ordered rail carriers to make San Pedro a terminal point. Affiant says that the growth of Los Angeles has been due largely to many unusual natural conditions and advantages and not to undue preference or advantage in the terminal rates published by the rail carriers.

Further as to the necessity of the existing rate adjustment, affiant says that current rates from defined territories, Colorado common points and east, to and including the Atlantic seaboard, to all intermountain territory up to Pacific coast terminal points, are class rates less-than-carload and carload, effective under the commission's order of January, 1911, and some carload commodity rates voluntarily made by the carriers. The so-called back-haul points are included in the western territory described, at which points the combination of the Pacific coast terminal carload and less-than-carload rate plus the local rate back is lower than the direct class or commodity rate and is therefore applied. Shipments may be made via water routes to the Pacific coast terminals and then by rail to those interior

303 so-called back-haul points at less than the direct all-rail rate; therefore the rates applied by the all-rail carriers from eastern points to the so-called back-haul points are forced below reasonable; that is, compelled by competition of the water carriers from Atlantic to Pacific ports. Rates and groupings under one rate at terminal

points are made to meet peculiar conditions of water competition from Atlantic seaboard and from foreign countries. The rate necessary all rail from New York to meet the water competition to Pacific coast terminal is extended west on a postage stamp basis and is effective to Pacific coast terminals from all defined territories from the Atlantic seaboard westward up to and including Colorado common points. By this adjustment the manufactories in the western territory are placed upon an all-rail freight equality in the Pacific coast terminals and at back-haul points with the Atlantic seaboard manufactories: and as the Pacific coast has but small manufacturing interests, the opening of these mrkets is a valuable acquisition of the Pacific coast terminals and also of the intermountain points. Practically the entire supply of staple manufactured articles for the Pacific coast comes from the territory east of the Rocky Mountains from which the postage stamp or blanket rate basis applies. For a considerable distance eastward from the Pacific coast terminals the so-called black-haul basis is effective, which produces at such interior points the same rates from all the eastern points of origin and thus gives to the back-haul points, in addition to the Atlantic seaboard markets, the markets of the interior United States. The rate to the Pacific interior increases one point over the other as the distance from the Pacific coast terminal point increases, until the terminal com-
304 bination ceases to be less than the direct published reasonable rate; and thus water competition not only forces the rate below reasonable at the terminal points, but its compelling force also extends a considerable distance into the interior. This basis of rates has been in effect for many years and it is undoubtedly accountable for the great bulk of manufactured staple articles consumed at Pacific coast terminals and back-haul points supplied by the western territory. The so-called back-haul points are to-day on a lower rate basis than points some distance east thereof. For example, Ash Fork, Arizona, on the Santa Fe, must pay a higher rate from Chicago than from Missouri River and a still higher rate from the territory east of Chicago, while San Bernardino, an interior point in California, pays no higher rate than the terminal combination from all the territory east of the Rocky Mountains, and its rate is lower than the rate to Ash Fork from the same point of origin. While the general basis of the present rates to Pacific coast terminal points is water competition from the Atlantic seaboard, which concerns the great bulk of the traffic moving, some commodity rates at terminals points are, however, made to meet foreign competition, where the commodity is moved by water carriers from foreign countries and compete with the same article manufactured in the United States.

Practically all the terminal commodity rates are made to meet the peculiar conditions of competition that exist at terminal points. Rules and standards used to make reasonable rates for other points are entirely disregarded in the rate adjustments which rail carriers are compelled to make in meeting water and foreign compe-
305 tition at Pacific coast terminal points, as where in a terminal

commodity tariff ten different articles are grouped together and rated under one carload rate in standard classification, these ten articles may be divided into from three to seven groups to terminal points, each taking a different carload rate. Again, where the bulk of the movement of an article is from interior points and must pay a local rate to the Atlantic seaboard when routed by water lines, the rail carriers may not actually meet the water rate from the Atlantic seaboard, but they must base their rate to the Pacific coast terminal upon what is necessary to meet the combination rail-and-water charge upon the bulk of the traffic moving.

Affiant says that the decision of the commission is unreasonable as to the carriers and discriminatory as to many localities and shippers in that, after finding that water competition exists at Pacific coast terminals and does control rail rates, it declares fixed percentages to govern westbound rates from designated zones regardless of what the reasonable rates from such zones may be and without respect to the fact that the reasonableness or unreasonableness of an intermediate rate bears no relationship whatsoever to the rate at the Pacific coast terminal. To give effect to the decision of the commission, by advancing the Missouri River-San Francisco rate would be to drive the Missouri River and other manufacturers and jobbers west of Pittsburg out of the Pacific coast markets and to deprive the Pacific coast buyers of the markets in which for years they have been making a large portion of their purchases. Affiant expresses the belief that Pacific coast buyers have a right to enter the markets of the Middle States, and that, however the decision of the commission might be applied, it would operate not
306 as a regulation of commerce but as an obstruction thereto; while to give to the carriers the alternative of abandoning in whole or in part their terminal tonnage or else reduce rates to interior points, is unjust from any point of view, particularly as the ocean carriers which compel the low rates to the Pacific coast terminals are beyond the control of the commission. The interior rates which the commission can control can have and should have no relationship to the water rates which the commission can not control. It is admitted on all sides that the complaints of the intermountain country have been, not as to rates themselves, but as to relative adjustment. However accepted, the decision of the commission would inevitably impose upon the shipping public a serious and unnecessary burden. A material part of the expenses of railway operation continues regardless of the amount of traffic handled, and any excess of revenue over the "out-of-pocket" expenses incurred in the movement of traffic contributes in degree to the sum necessary to pay those continuing expenses. Consequently the diminution of any traffic which, although paying less than reasonable returns, nevertheless contributes to the payment of such expenses, would compel, in order that the total expense of operation might be met, the imposition upon other traffic of higher rates than would otherwise be necessary. If the rates to the Pacific coast terminals should

be advanced sufficiently to enable the carriers to receive approximately the same revenue on intermountain traffic as they earn at present, the volume of business moved by the railroads to Pacific coast terminals would be greatly reduced because tonnage would seek the cheaper water routes; whereas, if the present Pacific coast terminal rate basis should be maintained, and the order of the
307 commission followed as to intermountain rates, then the revenues of the carriers would be also greatly reduced because of the lower rate basis. Either alternative would seriously affect the revenues of the carriers which are now admittedly none too large.

Affiant says that the rate adjustment proposed by the commission would greatly reduce rates about which there never has been complaint and thereby take from the carriers revenue to which they are not only entitled, but also which they are in no financial condition to give up; that it is out of harmony with and would unsettle the industrial conditions on which the remarkable development of the Pacific coast and the intermountain regions has taken place, and that it would be fruitful of discrimination and injustice.

E. P. RIPLEY.

Subscribed and sworn to before me this 12th day of October, 1911.
[NOTARIAL SEAL.] JOHN A. McDONALD,
Notary Public.

My commission expires November 15, 1913.

309 In the United States Commerce Court.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al., petitioners,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT. } No. 50.

UNION PACIFIC RAILROAD COMPANY ET AL., PETITIONERS,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT. } No. 51.

AFFIDAVIT OF JAMES PEABODY.

STATE OF ILLINOIS, *County of Cook, ss:*

JAMES PEABODY, of lawful age, being duly sworn, deposes and says that he is statistician of the Atchison, Topeka and Santa Fe Railway Company, one of the petitioners in the above-entitled proceeding; that he has been statistician as aforesaid since 1896; that previously thereto for more than twenty years he had been in the service of railway companies or in other occupations which kept him in constant contact with the subject of railway rates and railway operations; that as statistician of the Atchison, Topeka and Santa Fe Railway Company it is his duty to collect, classify, and preserve data respecting the cost of operating the property of said